

National Freedom of Information Officer
U.S. EPA, FOIA and Privacy Branch
1200 Pennsylvania Ave., NW 2822T
Washington, DC 20466

Re: Appeal of Fee-Waiver Denial for FOIA Request Number EPA-HQ-2014-008529

Submitted by email on August 22, 2014

Dear National Freedom of Information Officer:

Pursuant to 40 C.F.R. § 2.104(j) (2014), please accept this letter as Food & Water Watch (F&WW)'s timely appeal¹ from the U.S. Environmental Protection Agency (EPA or agency)'s denial² of F&WW's fee-waiver for Freedom of Information (FOIA) Request Number EPA-HQ-2014-008529.³

The following letter demonstrates that F&WW meets its burden for a fee waiver by showing that the "disclosure of [requested] information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."⁴ As demonstrated below, the records that F&WW has requested will provide meaningful insight into whether or not the agency decided to curtail or pass-off an investigation of potential groundwater contamination in Pavillion, Wyoming – suspected to be from the company EnCana's use of hydrologic fracturing to extract natural gas, also known as fracking – in order to secure a Senate vote on now-EPA-Administrator Gina McCarthy. It therefore sheds significant light on whether EPA was carrying out its mission with its investigation into fracking's potential harms. The public has a vital interest in ensuring that the agency is not engaging in political deal-making at the expense of its mission and that the confirmation process is not corrupted by promises that would hand-cuff the agency from subsequently performing its mission after the confirmation.

Thus, because the requested records undoubtedly contribute significantly to the public's understanding about the harms with fracking, in Pavillion and elsewhere; about how EPA has carried out and will carry out its mission in investigating these harms; and about the McCarthy confirmation and the political-confirmations process, in general, EPA must grant F&WW's fee waiver and immediately process its FOIA request. As mandated by 40 C.F.R. § 2.104(k), the agency should provide a timely and detailed response within 20 days after the agency receives this letter.

Background on F&WW's FOIA Request EPA-HQ-2014-008529 and Corresponding Fee-Waiver Request

¹ 40 C.F.R. § 2.104(j) (2014) provides that appeals must be received within 30 days of the date of the denial letter. EPA's denial of F&WW fee waiver request was dated July 22, 2014. Thus, this appeal letter, sent on August 22, 2014, falls within the 30-day time period for an appeal.

² Attached as Exhibit A.

³ Attached as Exhibit B is F&WW's FOIA and fee-waiver request.

⁴ See 5 U.S.C. § 552(a)(4)(A)(iii) (2012).

On July 16, 2014, F&WW – a non-profit public interest organization that works to ensure people’s food, water, and fish are safe, accessible, and sustainably produced – submitted a FOIA request to EPA seeking information related to EPA’s investigation of groundwater in Pavillion, Wyoming and the nomination of now-Administrator Gina McCarthy. Specifically, F&WW sought any and all records:

- a) of communication between EPA officials and oil and gas industry officials and/or representatives, occurring between March 1, 2013 and July 31, 2013, regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, WY[;]
- b) of communication between EPA officials and members of Congress and/or their staff, occurring between March 1, 2013 and July 31, 2013, regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, WY[;]
- c) of communication between EPA officials and Heather Zichal, occurring between March 1, 2013 and July 31, 2013[,] regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, WY[; and]
- d) of internal EPA communications, occurring between March 1, 2013 and July 31, 2013, regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, WY.⁵

F&WW sought these records after EPA had abruptly terminated its 2008 investigation of Pavillion citizens’ complaints of odd smells and tastes with their water. In 2010 the agency had released data showing that petroleum hydrocarbons and chemical compounds present in the water posed a threat to drinking water.⁶ In 2011, EPA released a draft report finding that “the data indicates likely impact to ground water that can be explained by hydraulic fracturing.”⁷

On June 20, 2013 EPA announced, without warning, that it would not finalize this study. Instead, the agency would defer to a state-of-Wyoming investigation.⁸ The state’s investigation partly would be funded with \$1.5 million from EnCana, the company accused of contaminating the Pavillion water supply.⁹ EPA announced that, while it stood behind its 2011 draft report, the state’s investigation would be completely independent and not rely on EPA’s previous work.¹⁰ The agency provided no basis for the dropping of its own study except for Wyoming’s announcement of the EnCana-funded study.

⁵ Exh. B.

⁶ U.S. Environmental Protection Agency. [Press release]. “EPA releases results of Pavillion, Wyo. water well testing.” September 1, 2010.

⁷ U.S. Environmental Protection Agency. “Investigation of Ground Water Contamination near Pavillion, Wyoming.” Draft. (EPA 600/R-00/000). December 2011 at xiii.

⁸ U.S. Environmental Protection Agency. [Press release]. “Wyoming to lead further investigation of water quality concerns outside of Pavillion with support of EPA.” June 20, 2013; Office of Governor Matt Mead. [Press release]. “Wyoming to lead further investigation of water quality concerns outside Pavillion with support of EPA.” June 20, 2013

⁹ *Id.*

¹⁰ *Id.*

EPA's termination of its own study came just one month after Senate Republicans, including Wyoming's Senator Barrasso, were able to boycott and thereby delay a vote on now-Administrator Gina McCarthy's confirmation in the Environment and Public Works (EPW) Committee.

F&WW submitted its FOIA request in order to see if there was any connection between the termination of the study and any part of the confirmation process. With the request, F&WW submitted a detailed memo providing the basis for a fee-waiver, which F&WW incorporates herein by reference.¹¹

In a letter dated July 22, 2014, EPA denied F&WW's FOIA fee-waiver request because the organization had "failed to demonstrate that the release of the information requested significantly increases the public's understanding of government operations or activities."¹²

F&WW is now seeking an appeal of this complete and unequivocal denial of the organization's fee-waiver request.

Standard for EPA's Review of Fee-Waiver Requests

As you are surely aware, FOIA requires that documents be furnished without any charge or at a charge reduced below those set by the agency's fee schedule if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."¹³

Broadly, EPA's regulations under 40 C.F.R. § 2.107(l)(2) track the test that courts employ to determine whether the requester is eligible for a fee waiver,¹⁴ using the following factors to determine whether disclosure of the information is in the public interest:

- (i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote.
- (ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to

¹¹ *Id.*

¹² Exh. A.

¹³ 5 U.S.C. § 552(a)(4)(A)(iii).

¹⁴ See, e.g., *Prison Legal News v. Lappin*, 2006 U.S. Dist. Lexis 42738 at *14 (D.D.C. 2006) (citing *Larson v. CIA*, 843 F.2d 1481, 1483 (D.C. Cir. 1988)); see *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003).

contribute to such understanding when nothing new would be added to the public's understanding.

- (iii) The contribution to an understanding of the subject by the public is likely to result from disclosure: Whether disclosure of the requested information will contribute to “public understanding.” The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area and ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media will satisfy this consideration.
- (iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. The public’s understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. FOI Offices will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is “important” enough to be made public.

While the burden is on the requester to demonstrate that it is eligible, fee-waiver requests are to be liberally construed in favor of noncommercial interests¹⁵ and the agency’s denial letter must be “reasonably calculated to put the requester on notice as to the deficiencies in the requester’s case.”¹⁶ Once the requester has satisfied its burden of demonstrating that disclosure of the documents it requests is in the public interest, the agency must waive the fees for processing the request.¹⁷

Appeal

I. F&WW Meets Its Burden for a Fee Waiver

EPA’s July 22, 2014 letter indicates that it is only denying F&WW’s fee waiver based on the agency’s contention that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. This is insufficient notice of the grounds for EPA’s denial because it fails to narrow the reason for the denial. Regardless, F&WW addresses each of the parts of the test under 40 C.F.R. § 2.107(l)(2)(i)-(iv). Because EPA does not indicate that it denied F&WW’s fee waiver because the agency contends that the request is not “primarily in the commercial interest of the requester,” F&WW is not obligated to and does not discuss this fee-waiver factor. Were the agency to deny F&WW’s fee waiver on this separate ground, EPA would be obligated to issue a separate denial letter.

¹⁵ *Rossetti*, 326 F.3d at 1312.

¹⁶ *Friends of the Coast Fork v. U.S. Dept. of the Interior*, 110 F.3d 53, 55 (9th Cir. 1997); *see National Treasury Employees Union v. Griffin*, 811 F.2d 644, 649 (D.C. Cir. 1987) (explaining that once a requester has met his initial burden, an agency must explain its refusal to waive fees).

¹⁷ *Rossetti*, 326 F.3d at 1310 (citing *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987)).

And, as can be seen, F&WW easily meets its burden for a fee waiver pursuant to 40 C.F.R. § 2.107(l)(2)(i)-(iv). The Administrator must therefore grant the organization a fee waiver.

A. Pursuant to 40 C.F.R. § 2.107(l)(2)(i), the subject of the records F&WW requests concerns the “operations or activities of the government.”

As stated in its original FOIA and fee-waiver request, F&WW’s “request specifically identifies the confirmation of Administrator Gina McCarthy and the EPA investigation in Pavillion, WY. As such, the request specifically concerns identifiable operations or activities of the government.”

It is hard to imagine how documents responsive to F&WW’s request would not meet the requirements of 40 C.F.R. § 2.107(l)(2)(i), as EPA is a federal government agency as defined and covered by FOIA¹⁸ and the Administrative Procedures Act (APA).¹⁹ All of the non-exempt portions of the agency’s records are therefore subject to FOIA.

Since the documents that F&WW has requested are government agency records under FOIA and the APA, and these records detail government agency activities, it necessarily follows that F&WW’s request for these documents concerns “operations or activities of the government.”

B. Pursuant to 40 C.F.R. § 2.107(l)(2)(ii), disclosure of F&WW’s requested information is “likely to contribute” to an understanding of government operations or activities

F&WW’s analysis of the requested documents also will likely contribute to the public understanding of EPA’s operations.

F&WW seeks to analyze the requested documents to determine whether or not the agency has improperly engaged in horse-trading, allowing the state of Wyoming to conduct its own ground-water investigation in exchange for the Congressional action, such as Senator Barrasso’s eventual attendance at Administrator McCarthy’s confirmation vote before the Senate EPW committee. In other words, and as indicated in its FOIA request, the sought-after records “will provide insight into the confirmation process and whether it had any bearing on EPA’s decision to end their investigation of groundwater contamination in Pavillion, WY. To Pavillion, WY residents, in particular, the requested information will be ‘meaningfully’ informative.”

It is difficult to know the results of the organization’s analysis without first accessing the requested information. And, indeed, it might be that the requested documents reveal that

¹⁸An “agency” is “any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the government . . . or any independent regulatory agency.” 5 U.S.C. § 552 (f)(1) (2000); *See Lair v. Dept. of Treasury*, 2005 U.S. Dist. Lexis 4645, 8 (D.D.C. 2005) (“By the statute’s plain language, an agency need not be a cabinet-level agency.”)

¹⁹5 U.S.C. § 552(a)(3).

there were no meaningful conversations between the agency, industry staff, and Congress that were related to either Administrator McCarthy's nomination or the Pavillion investigation. But the D.C. Circuit has stated that uncertainty about the results of a request does not give the agency sufficient grounds for the denial of a fee-waiver request.²⁰ Rather, the question is whether disclosure of the information will likely contribute to the public understanding of government operations.²¹ Here, even if the requested information reveals no EPA communications with industry or members of Congress and their staff about the McCarthy nomination and the Pavillion investigation, the public will gain an understanding that these events are completely unrelated.

To the best of F&WW's knowledge, the type of information requested is not publicly available. Indeed, EPA was extremely vague in its explanation for why it was dropping its investigation of the Pavillion groundwater supply, only pointing to the state's announcement of its investigation. Given that the company that is suspected of tainting the water is partially funding Wyoming's investigation, EPA still ostensibly would have had a strong incentive to continue its own investigation, notwithstanding the state's investigation. EPA's actions are therefore highly suspicious. The documents pertaining to Pavilion will shed great public light on the agency's decision to drop its investigation, and the public will be greatly enlightened by knowing the agency's reasons, regardless of what they are.

C. Pursuant to 40 C.F.R. § 2.107(l)(2)(iii), disclosure of the records that F&WW request will contribute to "public understanding."

F&WW indicated the following in its request:

F&WW staff has the ability to analyze the information requested and intends to disseminate its analysis broadly to provide for public understanding of the confirmation process and any influence on the decision to end the Pavillion investigation. Disclosure of records suggesting that EPA withdrew from its investigation due to outside pressure would contribute to public understanding of the agency's operations as well as the operations of Congress and the White House throughout cabinet confirmation hearings. F&WW will disseminate the results of its independent analysis through its established communication channels, including on-line content, fact sheets, issue briefs and reports, all of which are made freely available to the public. A number of courts have found that requesters' statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public is sufficient to entitle an organization to a fee waiver.²²

The following information adds to this already-sufficient explanation²³ of why a fee waiver is merited, additionally demonstrating that F&WW staff have the ability to analyze the documents that should be released, as well as distribute its analysis broadly.

²⁰See *Rossotti*, 326 F.3d at 1314.

²¹See *Id.*

²²Exh. B.

²³See *S. Utah Wilderness Alliance v. U.S. BLM*, 402 F. Supp. 2d 82, 88 (D.D.C. 2005) (quoting *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004)) ("courts' findings that organizations' 'statements of

F&WW has a number of staff with an extensive histories working on water issues and on fracking, in particular. Indeed, the organization has authored and released 33 reports, issue briefs, and factsheets about fracking.²⁴ None of the information requested is technical, but even if it was, F&WW have a number of experts on this issue, including several researchers that focus almost exclusively on this issue.²⁵ This is sufficient background and expertise for F&WW to be able to understand and analyze the information requested.²⁶

F&WW also has much experience distributing such analyses to the general public. The organization regularly published blogs covering various issues, including fracking.²⁷ It also regularly publishes factsheets, which it distributes widely.²⁸ It uses email to convey much of this information, through email updates and action alerts. It is estimated that the organization has at least 656,809 people on its email lists, many of whom are decision-makers, legislators, scientists, activists, and members of the general public. The organization also distributes much of this information through its website. In July 2014, alone, the organization had 323,706 visits to its website from 232,157 visitors, of which 176,417 were new visitors. The organization had a total of 634,358 hits, or pages viewed on its website.

Finally, F&WW has extensive experience working with media, and it plans on using its experience and extensive contacts with the media to distribute its analysis of the requested documents. F&WW has a good relationship with publications that are focused on fracking. Attached are some additional recent articles that either quoted F&WW staff members or were based on the organization's analyses.²⁹ One that quotes F&WW even mentions Pavillion and Obama administration staffers' involvement in the investigation.³⁰ The relationships that F&WW staff has with these specific stories' authors and other reporters will enable the organization to distribute its analysis widely.

D. Pursuant to 40 C.F.R. § 2.107(l)(2)(iii), disclosure of F&WW's requested information is likely to contribute "significantly" to public understanding of government operations or activities.

The information that F&WW has requested is of vital interest to the public for at least the three following reasons.

First, the requested information pertains to debate around fracking and EPA's investigations surrounding its potential harms, issues that have been highly controversial and

intent to disseminate requested information through newsletters, popular news outlets, and presentations . . . [are] sufficient to entitle [the] organization to a fee waiver.'"). See also *Rossotti*, 326 F.3d at 1314.

²⁴ See http://www.foodandwaterwatch.org/research/?rs=*&fqcat=gas-fracking^&fqdate=&fqtype=reports|factsheet|profiles|studies|briefs&fqdate=

²⁵ See attached as Exhibit C.

²⁶ See *S. Utah Wilderness Alliance v. United States BLM*, 402 F. Supp. 2d 82, 88 (D.D.C. 2005) (finding that an organization that had released a report, frequently made public comments to a federal agencies, and had contracted with scientists on a topic had sufficient expertise on the matter).

²⁷ <http://www.foodandwaterwatch.org/blogs/>.

²⁸ For examples, see attached Exhibit D.

²⁹ See attached, as Exhibit E.

³⁰ *Id.*

the subject of great public interest. In light of these debates, the public needs more information about fracking and its potential harms, not less.

For example, the energy industry has repeatedly argued that there has not been one incident of groundwater contamination due to fracking.³¹ EPA's draft study raised serious questions about these claims. Regardless, of what the Wyoming study finds, it is important that the public gain a greater understanding about EPA's initial draft report and then its subsequent decisions to abandon its investigation and instead defer to the state's investigation – which would be conducted without relying on EPA's original work. Therefore, the requested information will enhance the public discourse about the potential dangers of fracking. Moreover, those who live in and around Pavillion who were sickened need to know as much as possible about the process underlying EPA's investigation its eventual decision to defer to the state.

And the requested information is not simply about fracking. It is about whether the agency is fulfilling its mission by adequately investigating the harms from fracking. As indicated in F&WW's FOIA request:

The *Wall Street Journal* reported in 2013 that over 15 million Americans live within a mile of a well drilled since 2000.³² However, FWW and our allies are concerned about EPA's abrupt abandonment of the Pavillion investigation, as well as the investigations in Dimock, PA and Parker County, TX. For this reason, evidence of undue influence on EPA's decision to hand the investigation to the State of Wyoming would contribute significantly to public understanding of Gina McCarthy's confirmation as well as EPA's decision to withdraw from an investigation that had already raised important issues about the consequences of drilling and fracking for oil and gas. Regardless of whether any undue influence was actually exercised, disclosure of communications that either confirm or deny suspected influence is significant to the residents of Pavillion, WY, the millions of residents living near fracked oil and gas wells, and the public at large that is interested in either the administrator confirmation process or the possibility that EPA's original conclusion was correct. Residents of Pavillion, as well as the many members of the public, are concerned about the integrity of EPA's decision to step down from the investigation. Disclosure of the requested information would either ameliorate or justify this public concern, outcomes that either way are significant not just to residents of Pavillion but also to the public at large.

These concerns about whether EPA is fulfilling its statutory mission by adequately investigating fracking in Pavillion and elsewhere have been the subject of number of newspaper articles raising the same questions, including at least one that focused on Obama-Administration-staffer Heather Zichal's role in the Pavillion investigation.³³ Zichal is a person specifically mentioned in F&WW's request.

Second, the requested documents will shed light on how the agency is and will be fulfilling its mission, more generally, even apart from fracking. The public has a vested interest in knowing that the agency is truly working to protect public health and not simply trying to

³¹ Attached as Exhibit F.

³² Gold, Russell and Tom McGinty. "Energy boom puts wells in America's backyard." *Wall Street Journal*. October 25, 2013, attached as Exhibit G.

³³ Exh. E.

protect any industry or sacrificing the quality of its work in order to avoid political losses, such as a hang-up with a political confirmation. The public also has a vital interest in knowing of any promises that were made as part of the McCarthy confirmation process that might limit the subsequent ability of EPA to perform its mission after the confirmation.

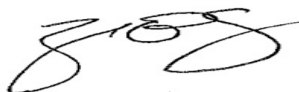
Third and finally, the requested records will reveal previously undisclosed information about how the administration treats the confirmation process. It is fundamental to a working democracy that the public knows as much as possible about how the advice-and-consent process works with political appointments. F&WW's requested information will shed light on this process for now-EPA-Administrator McCarthy. The public has a vital interest in knowing how the Obama administration has sought to secure its agency appointments, especially if it has been through promises about how the agency will be performing certain regulatory work.

Conclusion and Request

The above information provides more than enough information for the agency to conclude that F&WW is, in fact, justified in receiving its fee waiver for FOIA Request Number EPA-HQ-2014-008529. The request should be granted to immediately process its FOIA request. A timely and detailed response is expected within 20 days after the Agency receives this appeal as mandated by 40 C.F.R. § 2.104(k).

F&WW appreciates your consideration of this appeal and would be happy to discuss it further with you at (202) 683-2451.

Sincerely,

A handwritten signature in black ink, appearing to read 'Z. Corrigan', with a stylized flourish at the end.

Zachary B. Corrigan
Senior Staff Attorney
zcorrigan@fwwatch.org

Exhibit A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 22, 2014

OFFICE OF
ENVIRONMENTAL INFORMATION

Ms. Francesca Buzzi
Food & Water Watch
1616 P Street, NW
Suite 300
Washington, DC 20036

RE: Request Number EPA-HQ-2014-008529

Dear Ms. Buzzi:

This is in response to your request for a waiver of fees in connection with your Freedom of Information Act (FOIA) request to the U.S. Environmental Protection Agency (EPA) seeking a copy of communications regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, Wyoming, as described in your request.

We have reviewed your fee waiver justification and based on the information provided, we are denying your request for a fee waiver. You have failed to demonstrate that the release of the information requested significantly increases the public understanding of government operations or activities. Accordingly, there is no need for this office to address the remaining prongs of the fee waiver criteria. If the estimated cost exceeds \$25.00, the EPA Office of the Administrator will contact you regarding the cost of processing your request and seek an assurance of payment. They will be unable to process your request until they receive your written assurance of payment.

Under the FOIA, you have the right to appeal this determination to the National Freedom of Information Office, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, NW (2822T), Washington, DC 20460 (U.S. Postal Service Only), E-mail: foia_hq@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200

Ms. Francesca Buzzi

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Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, NW, Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOI number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Should you choose to appeal this determination, please be sure to fully address all factors required by EPA's FOIA Regulations, located at 40 C.F.R. § 2.107(l) in your appeal. If you have any questions concerning this determination please contact me at (202) 566-1667.

Sincerely,



Larry F. Gottesman
National FOIA Officer

Exhibit B

National Freedom of Information Act Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

[Also submitted via email at hq.foia@epa.gov]

July 16, 2014

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I respectfully request the below records, between March 1, 2013 and July 31, 2013, regarding the confirmation of Gina McCarthy to the position of EPA Administrator and the EPA investigation into groundwater contamination in Pavillion, Wyoming.

I hereby request any and all records:

- a) of communication between EPA officials and oil and gas industry officials and/or representatives, occurring between March 1, 2013 and July 31, 2013 regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, WY.
- b) of communication between EPA officials and members of Congress and/or their staff, occurring between March 1, 2013 and July 31, 2013 regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, WY.
- c) of communication between EPA officials and Heather Zichal, occurring between March 1, 2013 and July 31, 2013 regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, WY.
- d) of internal EPA communications, occurring between March 1, 2013 and July 31, 2013 regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, WY.

I am requesting these records as a representative of Food & Water Watch, a non-profit consumer advocacy organization, and request a fee waiver on the following basis:

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. A request for access to records for their informational content alone does not satisfy this factor: The above request specifically identifies the confirmation of Administrator Gina McCarthy and the EPA investigation in Pavillion, WY. As such, the request specifically concerns identifiable operations or activities of the government.

2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request: The requested records will provide insight into the confirmation process and whether it had any bearing on EPA's decision to end their investigation of groundwater contamination in Pavillion, WY. To Pavillion, WY residents, in particular, the requested information will be "meaningfully" informative.
3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough: F&WW staff has the ability to analyze the information requested and intends to disseminate its analysis broadly to provide for public understanding of the confirmation process and any influence on the decision to end the Pavillion investigation. Disclosure of records suggesting that EPA withdrew from its investigation due to outside pressure would contribute to public understanding of the agency's operations as well as the operations of Congress and the White House throughout cabinet confirmations. F&WW will disseminate the results of its independent analysis through its established communication channels, including on-line content, fact sheets, issue briefs and reports, all of which are made freely available to the public. A number of courts have found that requesters' statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public is sufficient to entitle an organization to a fee waiver.¹
4. The disclosure must contribute "significantly" to public understanding of government operations or activities: EPA's draft report on the investigation found that "the data indicates likely impact to ground water that can be explained by hydraulic fracturing."² When EPA handed the investigation to the State of Wyoming, the agency's press release said, "EPA stands behind its work and data."³ The *Wall Street Journal* reported in 2013 that over 15 million Americans live within a mile of a well drilled since 2000.⁴ Because the practice of fracking has expanded so rapidly, the risk of water contamination is significant to residents across the country. For this reason, evidence of undue influence on EPA's decision to hand the investigation to Wyoming would contribute significantly to public understanding of the cabinet confirmation process and the operations of EPA. Regardless of whether any undue influence was actually exercised, disclosure of communications that either confirm or deny suspected influence is significant to the residents of Pavillion, WY, the millions of residents living near fracked oil and gas wells, and the public at large that is interested in either the administrator confirmation process or the possibility that

¹See *S. Utah Wilderness Alliance v. U.S. BLM*, 402 F. Supp. 2d 82, 88 (D.D.C. 2005) (quoting *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) ("courts' findings that organizations' 'statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations . . . [are] sufficient to entitle [the] organization to a fee waiver.'")). See also *Judicial Watch, Inc., v. Rossotti*, 326 F.3d at 1314.

² United States Environmental Protection Agency. "Investigation of Ground Water Contamination near Pavillion, Wyoming." Draft. (EPA 600/R-00/000). December 2011 at xiii.

³ EPA. [Press release]. "Wyoming to lead further investigation of water quality concerns outside of Pavillion with support of EPA." June 20, 2013

⁴ Gold, Russell and Tom McGinty. "Energy boom puts wells in America's backyard." *Wall Street Journal*. October 25, 2013.

EPA's original conclusion was correct. Residents of Pavillion, as well as the many members of the public, are concerned about the integrity of EPA's decision to step down from the investigation. Disclosure of the requested information would either ameliorate or justify this public concern, outcomes that either way are significant not just to residents of Pavillion but also to the public at large.

5. The extent to which disclosure will serve the requester's commercial interest, if any: Food & Water Watch has no commercial interest in obtaining the agency records that it is requesting.
6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest: There is no commercial interest, and the public interest is significant.

If this FOIA request is denied in whole or in part, a detailed justification for withholding the records is expected. I also ask that any non-exempt segregable portions of the requested documents be disclosed.

Thank you for your prompt attention to this matter. Please contact me at 202-683-4951 or fbuzzi@fwwatch.org with any questions regarding this request for information.

Sincerely,

Francesca Buzzi
Researcher
Food & Water Watch

Exhibit C

FOOD & WATER WATCH

Staff

Meet the Food & Water Watch staff

WENONAH HAUTER – EXECUTIVE DIRECTOR



Wenonah Hauter is the Executive Director of Food & Water Watch. She has worked extensively on food, water, energy and environmental issues at the national, state and local level. Her book *Foodopoly: The Battle Over the Future of Food and Farming in America* (<http://www.foodopoly.org>) examines the corporate consolidation and control over our food system and what it means for farmers and consumers. Experienced in developing policy positions and legislative strategies, she is also a skilled and accomplished organizer, having lobbied and developed grassroots field strategy and action plans. She is currently writing *Frackopoly: The Battle for the Future of Energy* (<http://www.foodandwaterwatch.org/about-frackopoly/>) and the *Environment* (<http://www.foodandwaterwatch.org/about-frackopoly/>) due for publication in 2015. From 1997 to 2005 she served as Director of Public Citizen's Energy and Environment Program, which focused on water, food and energy policy. From 1996 to 1997, she was environmental policy director for Citizen Action, where she worked with the organization's 30 state-based groups. From 1989 to 1995 she was at the Union of Concerned Scientists where, as a senior organizer, she coordinated broad-based, grassroots sustainable energy campaigns in several states. She has an M.S. in applied anthropology from the University of Maryland.

[Operations \(#Operations\)](#) | [Communications \(#Communications\)](#) | [Food \(#Food\)](#) | [Water \(#Water\)](#) | [Common Resources \(#CommonResources\)](#) | [International \(#International\)](#) | [Organizing \(#Organizing\)](#) | [Legal Advocacy \(#LegalAdvocacy\)](#) | [Development \(#Development\)](#) | [Finance & Human Resources \(#financeandhumanresources\)](#)

[Information Technology \(#InformationTechnology\)](#) | [Executive Director's Office \(#executivedirectorsoffice\)](#)

Operations

Lane Brooks – Chief Operating Officer



(<http://www.foodandwaterwatch.org/wp-content/uploads/2009/11/BrooksLane-BIO.jpg>) Lane Brooks is the chief operating officer for Food & Water Watch and has overall responsibility for operations including administration, finances, human resources, IT, and development. Lane has more than 25 years experience in nonprofit fundraising and management. Most recently, he served as the director of development at Public Citizen for nine years where he was responsible for the organization's earned and contributed income programs, and served on the organization's management team. Previously, he worked for advocacy and performing arts organizations in Washington and Denver. Lane has also served as a leader in Washington, DC's philanthropic community as President of the city's chapter of the Association of Fundraising Professionals, as well as conference chair, and, on several occasions, speaker at fund raising conferences. Lane has a

Professionalism, as well as conference chair, and, on several occasions, speaker at fund raising conferences. Lane has a

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Water

Francesca Buzzi — Researcher



Francesca Buzzi is a researcher on the water program at Food & Water Watch. Her research focuses on the environmental, social, political, and economic implications of unconventional oil and gas development. She holds a B.A. from the College of Letters at Wesleyan University with a concentration in French studies. Francesca can be reached at [fbuzzi\(at\)fwwatch\(dot\)org](mailto:fbuzzi(at)fwwatch(dot)org).

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Alison Grass — Researcher



Alison Grass is a researcher for the water program. She works on a variety of water issues that impact safe, affordable public tap water. Alison has a Master of Urban and Regional Planning degree, specialized in Environmental Planning, from Alabama A&M University. Her environmental planning niche is water sustainability and rainwater harvesting and as Graduate Research Assistant she conducted research on regional and municipal development planning policies. Alison also has a Bachelor of Arts degree in communications with dual minors in philosophy and communication management from the University of Alabama at Birmingham. Alison can be reached at [agress\(at\)fwwatch\(dot\)org](mailto:agress(at)fwwatch(dot)org).

Hugh MacMillan — Senior Researcher



Hugh MacMillan is a senior researcher in the water program. Prior to joining Food & Water Watch, he served one year as a legislative fellow and science advisor in the U.S. Senate and five years as an assistant professor in the Department of Mathematical Sciences at Clemson University. He has a Ph.D. in applied mathematics from the University of Colorado at Boulder. He can be reached at [hmacmillan\(at\)fwwatch\(dot\)org](mailto:hmacmillan(at)fwwatch(dot)org).

Emily Wurth — Water Program Director



Emily Wurth is Food & Water Watch's Water Program Director. Emily conducts research and promotes policies at the local, state and federal level to help protect the nation's water systems as public assets, and to safeguard the country's water resources. Emily has a B.A. in international studies and a Master of Public Health degree from the University of North Carolina at Chapel Hill. She can be reached at [ewurth\(at\)fwwatch\(dot\)org](mailto:ewurth(at)fwwatch(dot)org).

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Exhibit D

False Promises and Hidden Costs: The Illusion of Economic Benefits from Fracking

Fact Sheet • March 2012

The oil and gas industry argues that the potential economic benefits of fracking justify the risks and costs to public health and the environment. But the industry has grossly overestimated the number of jobs that fracking would create, and has either ignored or dismissed the public costs of the practice. This has created an illusion of economic benefits that is tainting the public debate.

The Fracking Nightmare

New drilling and hydraulic fracturing, or fracking, technologies have made it feasible to extract large quantities of oil and gas from shale and similar underground rock formations.¹ While this development has been a boon for the oil and gas industry, it has been a nightmare for communities exposed to the resulting pollution.

The nightmare includes spills of industrial waste, drinking water contamination, air pollution, explosions and fires, and ruined landscapes. Fracking is also contributing to climate-threatening levels of greenhouse gas emissions.

False Promises

With public concern growing, the oil and gas industry, industry-funded academics and analysts, and ideological think tanks have promoted drilling and fracking as an engine of economic growth and prosperity.²

But the job projections being touted are misleading. They come from economic forecasting models, not from actual employment data on economies with shale development.³

The projections do not account for the jobs destroyed in other parts of the economy, such as jobs lost in agriculture or tourism during and in the aftermath of drilling and fracking.⁴

In addition to this major flaw, Food & Water Watch has found numerous other problems with jobs projections that have been used, for example, in the push to open up New York State to fracking for shale gas.⁵ ***In one case, the number of new jobs that New Yorkers could expect from shale gas development was exaggerated by about 900 percent.***⁶

The illusion of widespread economic benefits relies on ignoring several basic facts about the oil and gas industry:

- When oil and gas companies move in to extract shale oil or gas in a new region, much of their spending, and thus much of the industry's economic multiplier effect, happens out of state, where companies are headquartered and where the industry is established.⁷
- Many of the better-paying jobs at the well go to transient, out-of-state workers who have industry experience, not to residents of the areas targeted for development.⁸
- It takes only about a year to prepare, drill and frack a shale gas well, and about 98 percent of the employment associated with each well occurs only during this "pre-production" stage.⁹ This means new wells must be drilled and fracked each year just to sustain the majority of jobs in the industry.
- Drilling and fracking jobs, and any associated local spending on goods and services, move from town to town, resulting in short-term boom-and-bust cycles that are often harmful to local communities over the long term.¹⁰
- Estimates of the amount of oil and gas in shale and other rock formations, and estimates of how much will flow out of new wells, are highly uncertain, meaning that royalty incomes are also highly uncertain and that the inevitable bust after a boom in drilling and fracking can come sooner than promised.¹¹

Hidden Costs

In addition to exaggerating the positive economic effects, proponents of fracking further create the illusion of economic benefits by ignoring or dismissing the financial costs that are borne by communities:

- New York estimated that each typical shale gas well would require 3,950 trips of heavy trucks.¹² Along with damaging public roads and being a general public nuisance, such traffic increases the risk of traffic accidents that place demand on emergency services.¹³
- Towering, well-lit and noisy drilling rigs operate 24 hours a day, marring the tranquil and scenic landscapes that attract tourists and generate local tourism income.¹⁴
- The threat of air and water pollution from widespread drilling and fracking can further ruin a local community's tourism brand.¹⁵
- Air and water pollution has negatively impacted livestock and pets and posed serious health problems for people living near drilling and fracking operations.¹⁶
- Long-term water treatment costs can be significant if and when local drinking water resources become contaminated due to drilling and fracking.¹⁷
- Taken together, the impacts of drilling and fracking operations have led to declines in the value of impacted properties, and thus property tax revenues.¹⁸ Some banks are even declaring defaults on mortgages or not offering them at all for properties with gas leases, making them difficult to sell.¹⁹

Endnotes

- 1 National Petroleum Council. "Prudent Development: Realizing the Potential of North America's Abundant Natural Gas and Oil Resources." September 2011 at 192 and 193.
- 2 Goldsmith, Barrett. "McClendon to business journalists: 'get the real story'." *Houston Business Journal*. April 2011; Dlouhy, Jennifer A. "ConocoPhillips launches natural gas campaign." *Houston Chronicle*. September 14, 2011; Considine, Timothy J. et al. "The Pennsylvania Marcellus natural gas industry: status, economic impact and future potential." Pennsylvania State University, Department of Energy and Mineral Engineering. July 20, 2011 at ii, v, 31 to 32; IHS Global Insight. "The Economic and Employment Contributions of Shale Gas in the United States." Prepared for America's Natural Gas Alliance. December 2011 at 19; Public Policy Institute of New York State (PPI-NYS). "Drilling for Jobs: What the Marcellus Shale Could Mean for New York." July 2011 at 17 to 18.
- 3 Christopherson, Susan and Ned Rightor. "How shale gas extraction affects drilling localities: what policy makers need to know." *International Journal of Town and City Management*. Spring 2012 at 6; Weinstein, Amanda and Mark Partridge. Swank Program in Rural-Urban Policy. The Ohio State University. "The economic value of shale natural gas in Ohio." December 2011 at 2 and 11; Food & Water Watch. "Exposing the oil and gas industry's false jobs promise for shale gas development: how actual employment data show minimal job creation." November 2011.
- 4 Christopherson (2012) at 6 and 21 to 23; Weinstein (2011) at 2 and 11; Vaidyanathan, Gayathri. "Dairy farms on the decline across the Marcellus Shale." *E&E Publishing, LLC*. March 13, 2012.
- 5 Food & Water Watch. "Exposing the oil and gas industry's false jobs promise for shale gas development: how methodological flaws grossly exaggerate job projections." November 2011 at 1 and 2; Food & Water Watch. "How New York state exaggerated potential job creation from shale gas development." November 2011 at 2.
- 6 Food & Water Watch. "Exposing the oil and gas industry's false jobs promise for shale gas development: how methodological flaws grossly exaggerate job projections." November 2011 at 1.
- 7 Christopherson (2012) at 8; Weinstein (2011) at 14; Jacquet, Jeffrey. Pennsylvania State University, Northeast Regional Center for Rural Development. "Energy boomtowns & natural gas: implications for Marcellus Shale local governments & rural communities." January 2009 at 14.
- 8 Christopherson (2012) at 8; Rumbach, Andrew. Prepared for the Southern Tier Central Regional Planning and Development Board (New York). "Natural gas drilling in the Marcellus Shale: potential impacts on the tourism economy of the Southern Tier." July 2011 at 10.
- 9 Marcellus Shale Education & Training Center (MSETC). "Pennsylvania Statewide Marcellus Shale Workforce Needs Assessment." June 2011 at 8 and 19; MSETC. "Marcellus Shale Workforce Needs Assessment." June 2009 at 5.
- 10 Jacquet (2009) at 2, 24 and 50; Kay, David. Cornell University, Department of City and Regional Planning. "The economic impact of Marcellus Shale gas drilling: what have we learned? What are the limitations?" April 2011 at 3, 23 and 24.
- 11 Barajas, Michael. "Why the Great Shale Rush in the Eagle Ford may be over sooner than you think." *San Antonio Current*. March 14, 2012.
- 12 New York State. Department of Environmental Conservation. "Revised Draft Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program: Well Permit Issuance for Horizontal Drilling and High-Volume Hydraulic Fracturing to Develop the Marcellus Shale and Other Low-Permeability Gas Reservoirs." September 7, 2011 at 6-303.
- 13 Christopherson (2012) at 14; Rumbach (2011) at 16.
- 14 Rumbach (2011) at 13.
- 15 *Ibid.* at 19.
- 16 Bamberger, Michelle and Robert E. Oswald. "Impacts of gas drilling on human and animal health." *New Solutions*, Vol. 22, Iss. 1. January 2012 at 51 to 77; Colborn, Theo et al. "Natural Gas Operations from a Public Health Perspective." *International Journal of Human and Ecological Risk Assessment*. September 2011 at 2 and 5.
- 17 United States Environmental Protection Agency. "Investigation of Ground Water Contamination near Pavillion, Wyoming." Draft. Office of Research and Development, National Risk Management Research Laboratory, Ada, Oklahoma 74820. (EPA 600/R-00/000). December 8, 2011 at xi and xiii; "Tests: Pa. gas drilling town's water still fouled." *Associated Press*. October 15, 2011.
- 18 Heinkel-Wolfe, Peggy. "Drilling can dig into land value." *Denton (Texas) Record Chronicle*. September 18, 2010; Radow, Elisabeth. "Homeowners and gas drilling leases: boon or bust?" *New York State Bar Association Journal*. November/December 2011 at 20 and 21.
- 19 Radow (2011) at 20 and 21; Urbina, Ian. "Rush to drill for natural gas creates conflicts with mortgages." *The New York Times*. October 19, 2011.

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"Frackademia"

Industry Influence on Fracking Research and Academia

Fact Sheet • May 2013

With increasingly large cuts to funding adversely impacting universities' capacity for research,¹ more and more schools are turning to corporations and industry-sponsored organizations for financial backing to augment budgets and fund research. Universities should be reliable sources of objective and innovative information and development, but, problematically, this conflict of interest compromises the integrity of science.

An extensive review of research projects funded by "Big Oil" companies revealed insufficient academic control by universities, a lack of peer review and undue industry influence in choosing research proposals.² Not surprisingly, many oil and gas industry-funded academics are promoting shale gas development through the controversial practice of hydraulic fracturing, or fracking.

Moreover, the industry has been providing funding for studies, professorships and capital improvements and is now looking to expand even further by undertaking fracking on an increasing number of college campuses. This can cause health and environmental risks for students and the surrounding community, and also calls into question the objectivity of findings from these institutions.

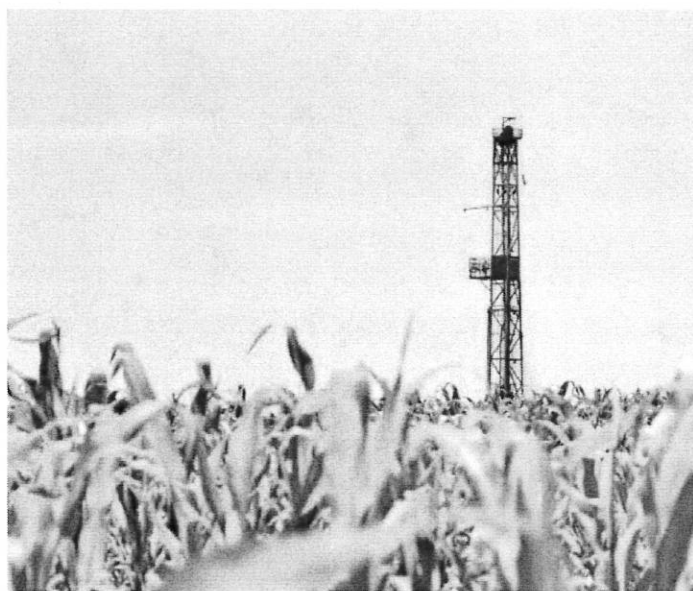
Many Studies Fail to Disclose Links to the Oil and Gas Industry

There are multiple well-documented examples of pro-fracking studies where the source of funding was not disclosed or authors have professional connections to the oil and gas industry that were unknown prior to publication. Such incidents have led Cary Nelson, past president of the American Association of University Professors, to call the lack of disclosure in industry-sponsored shale gas research "troubling."³

Pro-Fracking Studies and Direct Funding From Industry

For example, Timothy Considine, a former Penn State professor, current director of the University of Wyoming's Center for Energy Economics & Public Policy and president of Natural Resource Economics, Inc.,⁴ is a notorious figure in the world of frackademia, often at the center of controversy with his many pro-fracking studies.⁵

Considine was lead author of a 2009 Penn State study that predicted a 30 percent decline in drilling if a new



severance tax on fracking and drilling was implemented in Pennsylvania.⁶ The study was cited in debate around the tax proposal, which ultimately failed.⁷ After Considine issued a second study in 2010, a group called both reports into question, citing inflated job estimates and the absence of sponsorship information.⁸ Subsequently, the dean of the Penn State College of Earth and Mineral Sciences retracted the original version of the study, acknowledging that it was funded by the Marcellus Shale Coalition,⁹ a pro-industry group comprising nearly every major fracking company.¹⁰ He called the omission of the sponsor a "clear error."¹¹

Just as the Marcellus Shale Coalition funded Considine's controversial Penn State studies, in 2011 MIT released *The Future of Natural Gas*, a study funded by BP and Shell, among others, that concluded unsurprisingly that natural gas was a "bridge to a low-carbon future."¹²

Likewise, the 2012 report *An Analysis of the Economic Potential for Shale Formations in Ohio*, funded by the Ohio Shale Coalition, another natural gas industry group,¹³ and produced by faculty from Cleveland State University, Ohio State University and Marietta College,¹⁴ was loaded with “rosy employment statistics,” promising over 65,000 jobs and almost half a billion dollars in tax revenues by 2014 from the development of unconventional gas resources.¹⁵

Fallacious Findings and Corporate Connections

In February 2012, a study by the University of Texas Energy Institute was released claiming that there was “little or no evidence” of a connection between fracking “at normal depths” and groundwater contamination.¹⁶ A review by the watchdog group Public Accountability Initiative (PAI) uncovered previously undisclosed industry ties of the study’s lead author, Charles Groat.¹⁷ Groat received over \$1.5 million in cash and stock compensation between 2006 and 2011 from sitting on the board of Plains Exploration and Production Company, an organization that has a major stake in the fracking debate.¹⁸

The PAI investigation led to an official review by a University of Texas panel, which found that the drafts of the paper were not ready to be considered for release as “fact-based” scientific work and “fell short of contemporary standards for scientific work.”¹⁹ The panel recommended the study’s withdrawal,²⁰ Groat retired and the head of the Energy Institute stepped down from his position.²¹

Then, in late 2012, the State University of New York at Buffalo shut down its newly opened Shale Resources and

Society Institute²² after it published a report that falsely claimed that improving technologies and updated regulations were making fracking safer, while failing to mention the “strong” ties of the report’s authors and reviewers to the gas industry.²³

This study, also led by Considine,²⁴ claimed that the rate of major environmental violations and the total number of environmental events declined from 2008 to 2011 while, in reality, both measures increased, according to another analysis by PAI.²⁵ Moreover, the Institute’s co-directors had ties to the industry: John Martin, who also coauthored the study, had his own consulting firm and was a senior advisor to another firm active in the natural gas industry; Robert Jacobi was employed by a natural gas company called EQT.²⁶

Professorships, Building Funds and Other Means of Industry Funding of Universities

Beyond funding individual studies, the industry also funds endowed professorships and capital improvements as means of influence. Chesapeake Energy gave \$2.5 million to the University of Oklahoma to renovate a student lounge and endow two named professorships.²⁷ Hess Corporation gave \$4.4 million to the University of Wyoming to help fund that school’s Center for Advanced Oil and Gas Technologies Nano Resolution Imaging Laboratory.²⁸ Hess joined a coalition of donors to the center including Shell and Ultra Petroleum, both members of the Marcellus Shale Coalition,²⁹ who donated a total of \$10.9 million.³⁰ Table 1 outlines selected donations by oil and natural gas companies to universities, although this is by no means an exhaustive list.

Table 1. Selected Donations by Oil and Natural Gas Companies

Donor	Recipient	Amount	Year	Purpose
Carriozo Oil & Gas	University of Texas-Arlington	\$5 million	2010	Construction of the Special Events Center ³¹
Chesapeake Energy	Kansas University	\$5 million	2012	“An interactive, high-tech auditorium that will anchor Kansas University’s new Energy and Environment Center” ³²
Hess Corporation	University of Wyoming	\$4.4 million	2013	Center for Advanced Oil and Gas Technologies Nano Resolution Imaging Laboratory ³³
Chesapeake Energy	University of Oklahoma	\$2.5 million	2008	Renovate a student lounge and endow two named professorships ³⁴
Ultra Petroleum	University of Wyoming	\$2 million	2012	Center for Advanced Oil and Gas Technologies Nano Resolution Imaging Laboratory ³⁵
Chesapeake Energy	Oklahoma State	\$2 million	2011	“A state-of-the-art natural gas compression training center” ³⁶
Anadarko Petroleum	University of Wyoming	\$1.5 million	2008	Anadarko Petroleum Corporation Energy Resource Recovery Program Endowment ³⁷
ConocoPhillips	Colorado School of Mines	\$700,000	2011	Marquez Hall building project and several academic departments, faculty and programs ³⁸

Fracking on Campus: The New Shortsighted and Dangerous Frontier

Some colleges located atop shale reserves have already opened their campuses to fracking in exchange for funds from fees and royalties. This trend conceivably opens universities up to even greater control by the industry. In addition to compromising the academic integrity of these institutions, fracking on campus can pose potential public health and environmental risks — putting finite water resources and air quality in jeopardy — and could affect those on campus and in the surrounding area.³⁹

Since 2008, Carrizo Oil & Gas has been drilling on the campus of the University of Texas-Arlington,⁴⁰ and Chesapeake Energy is beginning work on a site on Bethany College (W.Va.) property.⁴¹ Meanwhile, West Liberty University (W.Va.) is hoping to pay for a new science center with an upfront payment on a drilling lease, and Alderson-Broadbush College (W.Va.) wants to fund millions in campus enhancements with its potential leasing revenues.⁴²

Ohio passed a law in 2011 allowing drilling on state-owned land, including public universities.⁴³ Although it is currently trying to maintain its power to veto fracking on campus, Ohio University reportedly has already been approached by both Chesapeake Energy and ExxonMobil about leasing drilling sites on its Eastern campus.⁴⁴

A similar bill passed by the Pennsylvania legislature and signed into law by Governor Tom Corbett in 2012 opened up the 14 universities in the state university system to drilling, including six schools that sit on top of or adjacent to the Marcellus Shale.⁴⁵ The law directs that 50 percent of all revenues go directly back to the university where the drilling takes place, with 15 percent dedicated to subsidizing student tuition and the remaining 35 percent spread across the state university system.⁴⁶

Gas companies are also looking outside the better-known Marcellus and Utica Shales in the Mid-Atlantic and are considering opportunities to expand southward into the Chattanooga shale play in Kentucky, Tennessee and Alabama.⁴⁷ For example, the University of Tennessee is considering opening up thousands of acres of its land for a fracking research project.⁴⁸ Despite protests from both inside and outside of the university community,⁴⁹ the State Building Commission unanimously approved the project in mid-March 2013,⁵⁰ enabling the university to begin soliciting bids from natural gas companies.⁵¹ This situation is unique, because although there has been industry-funded fracking research at certain colleges, and others have allowed companies to frack their land in order to bring royalty money to the school, this may be the first time that a college would use money from the fracking activity to also fund research.⁵²

If the University of Tennessee opens up fracking in the Cumberland Research Forest, which has undertaken wildlife management and ecosystem restoration projects for over 60 years,⁵³ the land clearing, air and water pollution



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Scenic view of Philippi, West Virginia, home to Alderson-Broadbush College.

and increased traffic that accompany fracking could have a potentially devastating impact on these long-term research efforts and could counter environmental and ecological restoration research goals conducted on university land.

Conclusion and Recommendations

Industry funding of studies and universities presents a significant challenge to academic integrity, and the latest opportunity for influence — fracking on campus — can also endanger public health and the environment. To turn back this tide of influence, Food & Water Watch recommends that:

- s ☐ Universities should not allow any pro-fracking interest or organization to directly fund studies, and should not allow faculty with extensive industry ties to publish studies on fracking;
- s ☐ Universities should adhere to strict academic guidelines when publishing studies about fracking, including stringent peer review, to minimize the chance for questionable studies;
- s ☐ The federal government should increase funding for fracking research, so that universities do not feel obliged to produce pro-industry findings to suit the funder's agenda; and
- s ☐ Fracking should be banned on all college campuses and properties.

Endnotes

- 1 National Science Foundation. [Press Release]. "Science board concerned about declines in public research university funding." September 25, 2012.
- 2 Washburn, Jennifer. Center for American Progress. "Big Oil Goes to College." October 2010 at 3.
- 3 Erdley, Debra. "Industry influence in universities' shale gas research eyed." *Pittsburgh Tribune-Review*. January 6, 2013.
- 4 Galbraith, Rob. "Frackademics: Timothy Considine – analyst or advocate?" June 2012. Available at <http://public-accountability.org/2012/06/frackademics-timothy-considine-analyst-or-advocate/>. Accessed February 2013; University of Wyoming. "Dr. Timothy Considine." Available at <http://www.uwyo.edu/ser/faculty/considine.html>. Accessed February 2013.
- 5 Begos, Kevin. "Shale research questioned." *Scranton Times Tribune* (Penn.). May 26, 2012.
- 6 Considine, Timothy, Robert Watson, Rebecca Entler, and Jeffrey Sparks. "An Emerging Giant: Prospects and Economic Impacts of Developing the Marcellus Shale Natural Gas Play." Pennsylvania State University, College of Earth & Mineral Sciences, Department of Energy and Mineral Engineering. August 5, 2009 at iv.
- 7 Efstathiou Jr., Jim. "Frackers fund university research that proves their case." *Bloomberg*. July 23, 2012.
- 8 Armas, Genaro C. "PSU drilling study questioned over industry tie." *Seattle Times*. June 14, 2010.
- 9 Galbraith (2012).
- 10 Marcellus Shale Coalition. "Coalition Members." Available at <http://marcelluscoalition.org/about/coalition-members/>. Accessed March 2013.
- 11 Efstathiou Jr., Jim. "Frackers follow tobacco's lead in funding research." *Pittsburgh Post-Gazette*. July 29, 2012.
- 12 Mantius, Peter. "'Frackademia' – MIT's Ernest Moniz, Obama's top candidate for Energy Secretary, oversees pro-industry-funded research." *DC Bureau, Natural Resource News Service*. February 21, 2013.
- 13 McDonnell, Tim. "Fracking 101: The cozy relationship between the natural-gas industry and academic researchers." *The Atlantic*. July 30, 2012; Ohio Shale Coalition. [Press Release]. "Economic impact study to look at Ohio shale." September 21, 2011.
- 14 Thomas, Andrew R. et al. "An Analysis of the Economic Potential for Shale Formations in Ohio." Cleveland State University, Ohio State University and Marietta College. 2012 at cover.
- 15 McDonnell (2012); Thomas et al. (2012) at 2.
- 16 Groat, Charles and Thomas W. Grimshaw. "Fact-Based Regulation for Environmental Protection in Shale Gas Development." University of Texas, Energy Institute. February 2012 at 18.
- 17 Connor, Kevin, Rob Galbraith, and Ben Nelson. Public Accountability Institute. "Contaminated Inquiry: How a University of Texas Fracking Study Led by a Gas Industry Insider Spun the Facts and Misled the Public." July 2012 at 13.
- 18 *Ibid.* at 14.
- 19 University of Texas Review Committee. "A Review of the Process of Preparation and Distribution of the Report 'Fact-Based Regulation for Environmental Protection in Shale Gas Development.'" November 30, 2012 at 9 and 23.
- 20 *Ibid.* at 9 and 23.
- 21 Henry, Terrence. "Review of UT fracking study finds failure to disclose conflict of interest." *StateImpact*. December 6, 2012.
- 22 Efstathiou Jr., Jim. "SUNY closes industry-backed fracking institute." *Bloomberg*. November 20, 2012.
- 23 Connor, Kevin, Rob Galbraith, and Ben Nelson. Public Accountability Institute. "The UB Shale Play: Distorting the Facts about Fracking." May 2012 at 1 to 2.
- 24 Considine, Timothy et al. "Environmental Impacts During Marcellus Shale Gas Drilling: Causes, Impacts, and Remedies." State University of New York at Buffalo, Shale Resources and Society Institute. May 15, 2012 at cover.
- 25 Connor, Galbraith, and Nelson (May 2012) at 1.
- 26 *Ibid.* at 2.
- 27 University of Oklahoma. [Press Release]. "A \$2.5 million commitment from Chesapeake Energy Corporation will benefit OU's Mewbourne College of Earth and Energy and the College of Atmospheric and Geographic Sciences." May 8, 2008.
- 28 University of Wyoming. [Press Release]. "Hess pledges \$4.4 million to UW for energy research." January 18, 2013.
- 29 Marcellus Shale Coalition (2013).
- 30 Roernik, Kyle. "Hess Corp. boosts University of Wyoming energy engineering facility campaign." *Casper Star-Tribune* (Wyo.). January 18, 2013.
- 31 Derrick, J.C., "Carrizo Oil & Gas Inc. makes largest donation to university with \$5M for Special Events Center." *The Shorthorn* (Arlington, Texas). September 27, 2010.
- 32 Metz, Christine. "Chesapeake Energy Corp. pledges \$5 million toward KU's new Energy and Environment Center." *Lawrence Journal-World* (Kan.). April 13, 2012.
- 33 University of Wyoming (January 18, 2013).
- 34 University of Oklahoma (May 8, 2008).
- 35 University of Wyoming (January 18, 2013).
- 36 Oklahoma State University Foundation. [Press Release]. "Chesapeake Energy Corporation Dedicates \$2 Million to Build Training Center to Support the Growing Natural Gas Industry." September 29, 2011.
- 37 University of Wyoming. [Press Release]. "University of Wyoming announces \$1.5 million gift and new partnership with Anadarko Petroleum Corporation." September 10, 2008.
- 38 Kendall, Trisha. "ConocoPhillips contributes \$700,000; Southwestern Energy continues support for Marquez Hall; Other recent gifts." *Mines Magazine*. November 17, 2011.
- 39 For more information, see: Food & Water Watch. [Report]. "The Case for a Ban on Gas Fracking." 2011; Food & Water Watch. [Report]. "Fracking: The New Global Water Crisis." 2012.
- 40 University of Texas at Arlington. [Press Release]. "UT Arlington receives first natural gas royalty check." January 23, 2009.
- 41 Junkins, Casey. "Gas drilling project ongoing at college." *The Intelligencer/Wheeling News Register* (W.Va.). October 9, 2012.
- 42 Schackner, Bill. "Drilling on campus: Marcellus shale boom puts colleges at crossroads." *Pittsburgh Post-Gazette*. November 6, 2011.
- 43 House Bill 133, 129th Ohio General Assembly, Section 1 (2011).
- 44 Phillips, Jim. "Trustee board wonders: Will law allow OU to say no to fracking?" *The Athens News* (Ohio). April 22, 2012.
- 45 Brownstone, Sydney. "Pennsylvania fracking law opens up drilling on college campuses." *Mother Jones*. October 12, 2012.
- 46 *Ibid.*
- 47 Whiteside, David. "Fracking goes South: Oil and gas industry (and NFL owner) lick their chops over Chattanooga Shale." *EcoWatch*. February 20, 2013.
- 48 Sohn, Pam. "University of Tennessee eyes fracking on state property." *Chattanooga Times Free Press* (Tenn.). January 30, 2013; Parker, Lauren. "Fracking concerns some in UT community." *The Daily Beacon* (Knoxville, Tenn.). February 8, 2013.
- 49 Parker (2013); Deese, Hollie and Robbie Brown. "University of Tennessee Wins Approval for Hydraulic Fracturing Plan." *The New York Times*. March 15, 2013; Boehnke, Megan. "Building Commission: UT fracking research project can go forward." *Knoxville News Sentinel*. March 15, 2013.
- 50 Boehnke (2013).
- 51 *Ibid.*
- 52 Platt, John. "University of Tennessee gets OK for natural gas extraction on public land." *Mother Nature Network*. March 18, 2013; Deese and Brown (2013); Hall, Kristin M. "Tennessee university proposes fracking on its own land." *The Associated Press*. March 15, 2013.
- 53 University of Tennessee Institute on Agriculture. "Cumberland Forest Unit." Available at <http://forestry.tennessee.edu/CUForest.html>. Accessed February 2013.

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Exhibit E

White House: Top Obama aide worked on the Pavillion fracking investigation

(<http://www.eenews.net/stories/1059987018>)

Energy & Environment News

Mike Soroghan

September 11, 2013

Pavillion, Wyo., is a tiny community of fewer than 300 people, nearly 2,000 miles from Washington, D.C., in a deeply Republican state that President Obama never had any chance of winning.

But Obama's top aide on energy issues, Heather Zichal, took a significant interest in the community's water supply in late 2011 and early 2012.

Documents show that Zichal, deputy assistant to the president for energy and climate change, monitored and managed developments behind the scenes as U.S. EPA prepared to release its findings that hydraulic fracturing had contaminated groundwater in Pavillion.

Those findings had outsized implications for the country's oil and gas drilling boom. They would serve as the first documentation of water contamination from hydraulic fracturing. Advances in the process have been behind the surge in domestic production.

Industry had long held that there had never been a documented instance of such contamination. But the EPA report stood to puncture that talking point. Nearly three years later, EPA has abandoned the investigation, and the implications of its findings are unclear.

Emails obtained by EnergyWire through the Freedom of Information Act show that Zichal got briefings from top EPA officials as they prepared to release the report, was informed the afternoon before the report was rolled out in December 2011 and sought to manage the fallout when it came under criticism.

"Can we get some talking points on this asap?" Zichal wrote to then-Deputy EPA Administrator Bob Perciasepe on Jan. 3, 2012, above a news story on flaws in EPA's handling of the sampling process.

The FOIA documents also show that Zichal emailed with then-EPA Administrator Lisa Jackson on the Pavillion investigation. Jackson herself showed considerable interest in the case, sending nearly 100 emails involving Pavillion between November 2010 and April 2011, including a few from her personal email account.

Jackson had also taken a close interest in a drilling contamination case in Texas that was

dropped in 2012 (EnergyWire, Feb. 13).

White House officials say there is nothing unusual in Zichal's involvement in Pavillion. But environmentalists and other groups say it indicates that politics might have been intruding on science.

EPA's Pavillion report found fracking fluids to be present in deep groundwater but not the area's shallower drinking water. The drilling and fracking that took place in Pavillion bears little resemblance to the mile-deep, high-volume drilling taking place in shale formations in Pennsylvania and North Dakota. But the report became a go-to example for environmentalists and others worried that fracturing could contaminate groundwater.

The findings ran into a buzz saw of criticism from the oil and gas industry and state officials. They deemed it sloppy and lacking in transparency. And when the U.S. Geological Survey said it couldn't replicate the results from one of the wells, they said their criticisms were validated.

EPA abandoned the Pavillion investigation earlier this summer with little explanation (EnergyWire, June 21). It was EPA's third retreat from a drilling contamination investigation during the Obama administration, joining methane migration cases in Texas and Pennsylvania.

The agency handed the investigation to Wyoming state officials, though the people with fouled water say the state long ignored their concerns and the state had fought EPA on the study. Wyoming will continue with the help of a \$1.5 million grant from Encana Oil & Gas Inc., the company accused of contaminating the water.

EPA says it stands by its results but will not rely on them in the future.

The White House emails add to questions from environmentalists and conservative groups about the role politics played in bringing the Pavillion investigation and in abandoning it. Similar concerns have been raised about the other two cases.

EPA scientists had already found merit to the case by the time the emails show the White House getting involved, said Amy Mall of the Natural Resources Defense Council. But Zichal's interest makes Mall wonder what role the White House played in EPA's retreat in Pavillion and the other two cases.

"This leaves open to question whether political involvement played a role in dropping these three cases," Mall said.

Food & Water Watch, which wants fracking banned, is calling on EPA to reopen all three pollution investigations, said Emily Wurth, the group's water program director.

Conservative lawyer Christopher Horner has already been pursuing evidence he says he obtained that the Obama administration retreated from the Pennsylvania case, in Dimock,

out of fear that the investigation might hurt Obama's re-election chances in 2012 (EnergyWire, July 30). He said White House involvement in the Pavillion case strikes a similar chord.

"That is consistent with the information presented to me about the Dimock case," Horner said, "that politics were guiding the proceedings and political considerations were at play."

Asked for comment, a White House official said Zichal's involvement was not unusual and didn't interfere with EPA's scientific decisionmaking.

"The White House has a coordinating role across agencies, and it is common practice for agencies to let the White House know about major announcements that are coming," the White House official said. "As the correspondence shows, the EPA conducts these analyses, not the White House, and this specific engagement is consistent with the administration's strong commitment to scientific integrity."

"Furthermore," the official said, "in recognizing that many agencies are involved in policy around natural gas, the president created an interagency working group with the White House to coordinate policy issues and engage in long-term planning on natural gas."

Zichal led the working group.

Zichal's role in regulations

Zichal, a former aide to then-Sen. John Kerry (D-Mass.), started in the White House as the assistant to energy and climate "czar" Carol Browner, who left in 2011. In the past year or so, Zichal has taken on an increasingly high-profile role as the White House's chief ambassador to oil and gas companies.

That role arose in part from industry lobbying. The working group on drilling that Obama tapped Zichal to head was requested by the American Petroleum Institute. Her handling of that assignment has earned her some praise from people in the oil and gas industry and criticism from environmentalists who follow drilling issues.

Zichal has played an important role in the administration's handling of proposed regulations for fracking on public lands. She met more than 20 times in 2012 with industry groups and company executives lobbying on the proposed rule, according to an EnergyWire review of White House visitor records (EnergyWire, April 12).

Environmental groups, which had far fewer meetings with her on the rule, have complained that the increased access is related to the administration's decisions to weaken the rule.

White House visitor records show Zichal met with another top EPA official, senior policy counsel Bob Sussman, in the White House complex three times from October to

December 2011. Those records offer no details of what gets discussed. But emails released by EPA under FOIA indicate that Sussman was Zichal's point of contact at EPA on the Pavillion issue.

About three weeks before the rollout, Zichal noted to Sussman in an email that EPA had done a briefing on the report for Sen. James Inhofe (R-Okla.) and asked whether the agency had done the same for Wyoming's congresswoman and two senators. When he hadn't replied the next day, Zichal followed up -- "Sorry, any update here?"

In November 2011, EPA gave the results of its testing to residents at a community meeting in Pavillion. The next morning, Sussman wrote Zichal that he had the details. Zichal replied, "Great. Will call as soon as this meeting wraps."

The night before the report came out in December, Sussman notified her it would be out the next day and added, "Happy to provide more details."

Dozens more emails between Zichal and Sussman, Jackson and other top EPA officials were withheld under exemptions to FOIA, but their subject lines indicate they concerned the Pavillion investigation.

Environmental group says health registry needed

(<http://www.houstonchronicle.com/business/energy/article/Gas-drilling-health-complaint-process-enhanced-5695425.php>)

Associated Press (ran in the Houston Chronicle, Modesto Bee and the Kansas City Star)

Peter Jackson

August 18, 2014

HARRISBURG, Pa. (AP) — Republican Gov. Tom Corbett's administration said Monday it has enhanced the state health department's handling of complaints involving natural-gas drilling, prompting environmentalists to renew their demand for more aggressive action.

Health Secretary Michael Wolf said steps recommended by a departmental working group include implementation of a written-letter response policy to better document correspondence between the department and people who file drilling-related health complaints.

Other changes include providing information to doctors about how to file environmental health complaints and making the department's website easier to use, he said.

"Protecting the public's health and ensuring that citizens and health care providers have access to accurate, timely and relevant information is a primary responsibility of the department and one that the governor and I take very seriously," Wolf said.

In July, six of the state's leading environmental groups called for an investigation into the department's handling of drilling complaints.

John Norbeck, vice president of PennFuture, said the changes announced Monday will promote transparency within the department but a statewide registry is essential for tracking environmental health threats and spotting trends early on.

It is "important that Pennsylvania try to get ahead of this from a public health standpoint," Norbeck said.

David Masur, director of PennEnvironment, said the state should not only establish a statewide registry but also move aggressively to learn more about the health risks as the industry continues to expand in the Marcellus Shale region in Pennsylvania.

"We need to do the research to figure (out) what the potential health effects are," he said.

Environmentalists and other critics of a natural-gas drilling procedure called hydraulic fracturing, or fracking, which involves injecting wells with chemically treated water, say it could contaminate water supplies, but the energy industry says the process has been used safely for years.

Health department spokeswoman Holli Senior said the department supports the concept of a registry but it would be an expensive proposition.

"We're still exploring a number of options, including public-private partnerships," Senior said. "With 57 complaints to date, it's not a very large sample size."

Food & Water Watch said Monday's announcement shows the department has "lost the trust of the people of Pennsylvania."

"An independent investigation is needed to uncover just how many fracking-related health complaints have been swept under the rug," said Sam Bernhardt, a spokesman for the group.

Gas field illnesses probed

(<http://thetimes-tribune.com/news/gas-field-illnesses-probed-1.1727541>)

Scranton Times-Tribune (PA)

Brendan Gibbons

July 30, 2014

Environmental groups are rounding up stories of sickness in the shale fields, following

reports of inaction by the state Department of Health.

Food & Water Watch and Berks Gas Truth, both opposed to gas development, gathered stories from 11 people living or working near gas wells who complained of a variety of health problems. Sore throats, skin rashes, headaches and nosebleeds were most common.

In mid-June and early July, NPR's StateImpact Pennsylvania reported on former health department workers who said their superiors told them not to respond to health inquiries related to gas drilling. An employee provided an email containing a list of buzzwords health employees were not allowed to follow up on, including "Marcellus Shale," "frack chemicals" and "natural gas."

A former community health nurse told StateImpact her supervisor instructed her to pass inquiries on the topics to the Bureau of Epidemiology and not follow up on them herself.

Following up on these reports, the environmental groups sought stories from those who say the state spurned their requests.

The groups contacted the state attorney general's office last week, Food & Water Watch organizer Sam Bernhardt said. On Tuesday, he received a response from an agent with the office's environmental crimes unit asking for contact information for affected residents.

The Attorney General's office would not comment on the email.

The email came in the middle of a conference call with two residents living in gas development zones and one former industry worker who shared their experiences with the health department.

They, along with most of the people who gave permission to share their contact information, have made headlines for their opposition to the industry.

Pam Judy, a Carmichaels, Greene County, resident who said she lives 780 feet from a compressor station, said she contacted the state and Allegheny County health departments to complain of constant fatigue, headache, sore throat and mouth ulcers.

Neither health department gave her any answers or referred her elsewhere, she said.

She did her own research, which led her to former Dish, Texas, mayor Calvin Tillman, who moved out of the heavily drilled town after fears that air emissions were harming his sons.

"I should not have needed to seek the information I needed outside my state," Ms. Judy said. "I truly believe there has been a cover-up on the part of the Department of Health to not log these calls."

Randy Moyer, a Portage, Cambria County resident, used to haul water for the industry. After he developed broad skin rashes, migraines, dizziness, tinnitus, sore throat and other symptoms, Mr. Moyer said he made six attempts to get answers from the state health department's Harrisburg office.

"I was searching for information," he said. "Up in Harrisburg, I couldn't get none."

His attorney eventually led him to the Southwest Pennsylvania Environmental Health Project, which listens to resident complaints of oil and gas-related health problems.

Craig Stevens, a Silver Lake Twp., Susquehanna County resident who frequently advocates against drilling, said the health department never followed up on his complaints of nosebleeds and other health problems.

The groups are seeking input from other residents who experienced similar issues. An online form is available at foodandwaterwatch.org/news. A hot line is also available at 717-467-3641.

How two small towns have shaken up the fracking debate

(http://www.washingtonpost.com/business/economy/how-two-small-new-york-towns-have-shaken-up-the-national-fight-over-fracking/2014/07/02/fe9c728a-012b-11e4-8fd0-3a663dfa68ac_story.html)

The Washington Post

Steven Mufson

July 2, 2014

Three years ago, the multi-billion-dollar Denver-based Anschutz Exploration Corp., which helped make its founder Philip Anschutz one of the richest men in America, filed a lawsuit against Dryden, a small town in upstate New York.

The issue: Dryden was sitting on top of some of the best shale gas prospects in the country, and Anschutz had bought a substantial number of leases giving it the right to drill there. But in August that year, Dryden — like towns across the country seeking to restrain the rush to drill for shale oil — had banned the combination of hydraulic fracturing and horizontal drilling known as fracking. It did this by adopting new language for its zoning laws and by citing road-use regulations, noise limits, and the need to protect 31 "critical environmental areas."

This week in a landmark decision, the New York State Court of Appeals ruled in favor of the town of Dryden and another town, Middlefield, which had been sued separately over similar local ordinances.

While it applies to local governments across the state of New York, the court's 5-2 decision in favor of "home rule" by towns and counties will reverberate across the

country, where many other local governments are putting up a fight to slow what has become a massive national shift toward natural gas production.

“This is simply a victory for local control,” said Dryden town board member Linda Lavine, a retired psychology professor. “It is a victory for liberals and conservatives of all sorts. It is what democracy is all about.”

There has been a wave of local resolutions, laws or proposals to ban or limit fracking and the disposal of fracking waste, including 35 such efforts in New Jersey, 13 in California, 10 in Colorado, 18 in Michigan and many more in Ohio, Pennsylvania and North Carolina, according to activist group Food and Water Watch. Even the District has adopted a resolution urging a prohibition on fracking in the George Washington National Forest.

In the eyes of the oil and gas industry, though, putting the power to regulate fracking in local hands is bad for business and bad for U.S. energy policy. Shale gas drilling has unlocked vast reserves, and shale gas now accounts for about 40 percent of total U.S. natural gas production. Without it, companies would be lining up to import natural gas, not export it as many now want to do.

The New York decision — and the whole issue of local resistance to fracking — also has broad political implications. In New York, it eases pressure on New York Gov. Andrew Cuomo (D) to take a position on fracking. Cuomo, widely believed to have national political ambitions, has avoided taking a position on fracking while sticking with a six-year-old “temporary” moratorium he inherited when he came into office in 2011. He has maintained the moratorium pending the outcome of a health study. That study probably won’t be done until after his next gubernatorial election.

In Colorado, where Sen. Mark Udall (D) is in a tough reelection race that will hinge in part on a variety of energy issues, the decision in New York is likely to encourage local foes of fracking.

Fifty-nine percent of voters in Longmont, Colo., cast ballots in favor of a ban on fracking and waste disposal even though nationwide industry groups poured money into Longmont Taxpayers for Common Sense, which opposed the ban. Since then, four more Colorado towns have also banned or declared long moratoria on fracking. Court challenges have been filed.

Udall, who appears to be seeking middle ground, has said that some areas should be off limits to shale drilling. But at a forum in May, he said, “it has risks but it can be done safely. We can find a balance between protecting our land and air and water and have jobs,” according to the Denver Business Journal. On his Web site, he says, “As Coloradans, we want our country to be energy independent, but we don’t want to sacrifice our land, water and air.” He vowed to press for higher safety standards, but not

to ban drilling.

And Colorado Gov. John Hickenlooper (D), who has imposed disclosure and leak prevention rules on the industry, also opposes local fracking bans. Hickenlooper is now seeking a special legislative session this summer in order to pass a compromise bill on the issue; if the bill fails, the fracking question is likely to be put on the ballot this fall for voters to decide.

Each state is different, however. The issue in the New York court case was whether towns like Dryden and Middlefield, which includes part of the village of Cooperstown, have the right to limit oil and gas drilling through their local zoning laws or whether the state's Oil, Gas and Solution Mining Law preempts the home rule authority to regulate land use.

Dryden is part of Tompkins County, one of two New York counties where the Marcellus shale formation juts out from Pennsylvania, where oil and gas companies have drilled more than 13,000 wells using fracking techniques to unlock gas trapped in shale rock.

Industry sources say that Chesapeake Energy, Anschutz and XTO Energy, now part of Exxon Mobil, had purchased lease holdings in the area, some as early as 2006.

But the 2011 activism in Dryden was followed by a landslide victory that fall by local council members who made the fracking ban a centerpiece of their campaigns. The town supervisor won nearly 60 percent of the vote.

"The voice of the people was actually very clear," Lavine said.

The state court of appeals ruling backs up the Dryden council, and it garnered support from both the liberal and conservative ends of the spectrum. Written by Judge Victoria A. Graffeo, who was appointed by Gov. George Pataki (R), the decision was joined by another Pataki appointee, Judge Susan Phillips Read. They were joined by Chief Judge Jonathan Lippman, who was appointed by Gov. David A. Paterson (D), and two Cuomo appointees, Judges Jenny Rivera and Sheila Abdus-Salaam.

"We do not lightly presume preemption where the preeminent power of a locality to regulate land use is at stake," Graffeo wrote. "Rather, we will invalidate a zoning law only where there is a 'clear expression of legislative intent to preempt local control over land use.' "

She added that "at the heart of these cases lies the relationship between the State and its local government subdivisions, and their respective exercise of legislative power. These appeals are not about whether hydrofracking is beneficial or detrimental to the economy, environment or energy needs of New York, and we pass no judgment on its merits."

Instead, she and the four judges who joined her said that the language and history of the state oil and gas law did not show any intent to exercise its power to supersede local home rule.

Thomas S. West, an Albany-based oil and gas industry attorney for Norse Energy, argued before the court of appeals on June 3 that the towns had exceeded their authority, adding that a ruling in favor of the towns would “have a very chilling effect” and it would be “very hard for operators to justify spending hundreds of millions of dollars to come in and not have regulatory certainty.” He vowed that the industry would go to the state legislature to get it to step in.

“Are we going to let 932 towns decide the energy policy of New York state?” asked Scott Kurkoski, a lawyer for a dairy farm that had signed exploration leases in 2007.

Industry groups condemned this week’s decision.

“A regime where you essentially have local control of the process at the township level is a challenge and is more problematic for companies than if you had a statewide program,” said Frank Macchiarola, executive vice president for government affairs at America’s Natural Gas Alliance, an industry group. “The regulatory structure at the state level is substantially better for a number of reasons. One is the expertise brought to bear by the state department of environmental conservation versus the local or county council.”

But foes of fracking cheered the state court ruling. They asserted that the drilling would risk exposure to toxic substances and that it would destroy the rural and small town atmosphere central to the identity of these communities.

One of those foes is Helen Slottje, a Boston commercial lawyer who moved to Ithaca because her husband, David, joined a family business there. In 2009, Slottje says, she attended a community meeting about gas drilling that horrified her. She has been providing New York state towns pro-bono legal advice ever since, urging them to use their right to regulate local land use. This year Slottje was given the Goldman Prize for grass-roots environmental activism.

Slottje said the ruling would likely trigger more local bans on fracking because some towns previously did not want to risk the trouble and expense of going to court to fight the oil and gas industry. Many towns also feared that the industry would try to extract “just compensation” for existing leases, calling the local laws regulatory “takings” under the Fifth Amendment, something that Colorado lawyers say is still a concern there.

“The ruling is an unequivocal endorsement and reaffirmation of home rule for local towns in New York, including the right to entirely prohibit hydro-fracking in their towns,” Slottje said. “Which is a real victory for people and democracy and the rights of communities for how they want to live.”

EPA asked to reopen probe

(<http://www.weatherforddemocrat.com/newstoppers/x1427976060/EPA-asked-to-reopen-probe>)

Weatherford Democrat (TX)

Newsroom America

January 29, 2014

(NEWSROOM AMERICA) – A coalition of concerned organizations has called on President Obama and EPA Administrator Gina McCarthy to reopen investigations into the connection between drilling and fracking for oil and gas and contaminated groundwater in Parker County and to ensure residents there have access to safe drinking water.

Initiated by Americans Against Fracking and signed by more than 200 groups, the letter also asked the administration to meet with residents whose water has been contaminated, just as the administration has met with representatives from the oil and gas industry.

“President Obama is in danger of leaving a toxic legacy if his administration doesn’t get its facts straight on fracking,” said Food & Water Watch Executive Director Wenonah Hauter. “The EPA needs to take responsibility for the mess caused by fracking, and once and for all, assess the risks of fracking to the public.”

The development comes on the heels of the EPA Inspector General’s report on the agency’s investigation in Parker County that confirmed that the regional EPA office was justified in intervening on behalf of local residents.

The report found that the EPA pulled out of litigation with oil and gas companies as part of an agreement with Range Resources that assured the company would participate in a national agency study on the relationship between hydraulic fracturing and drinking water contamination.

The report also found that EPA agreed to let Range Resources take over testing the wells in Parker County, even though the agency lacks quality assurance information on the testing.

Range Resources reported finding no concerning widespread methane contamination in the families’ wells. However, just this month, Bloomberg reported that independent tests conducted by Duke University found high levels of combustible methane in the wells, contradicting Range Resources’ findings.

John Armstrong, of Frack Action said, “The Inspector General’s report and Duke University’s water tests show that affected residents’ water and health have been left at risk. President Obama and EPA Administrator Gina McCarthy must act swiftly to ensure residents’ safety and to reopen the investigation into water contamination from fracking.”

The letter concludes, "It is incumbent upon you to correct your administration's troubling abdication of responsibility and denial of the science on fracking and the harms it is posing to Americans across the country. As more than 250,000 Americans have already urged and the evidence compels, we ask that you swiftly act to re-open the EPA's investigations in Texas, Pennsylvania and Wyoming."

The EPA dropped similar investigations in Dimock, Pa., and Pavillion, Wyo. In Dimock, it has since been revealed that EPA dropped its investigation against the wishes of the Philadelphia EPA office, the agency that had been monitoring drinking water there.

In Pavillion, EPA abandoned its investigation even after linking high levels of chemicals, including benzene, to fracking, handing the investigation over to the state with ongoing research funded by EnCana, the same drilling corporation under investigation for the contamination.

Earlier this month, EPA Administrator Gina McCarthy noted in a letter to the National Resources Defense Council, in response to its request to reopen and complete the three investigations, that it was not necessary to do so because residents affected by contamination could find alternative water supplies or treatment systems.

A recent Associated Press review found many confirmed cases of water contamination from fracking, noting that the review casts doubt on the industry's assertion that fracking and drilling don't affect drinking water supplies.

This builds on evidence from 2013 and 2011 Duke University studies that found systematic evidence that methane associated with shale gas extraction contaminates drinking water.

Moreover, a University of Missouri School of Medicine study released in December linked fracking to the presence of dangerous hormone-disrupting chemicals in the water near fracking sites, including the Colorado River.

The groups are calling on the Obama Administration to correct what they believe to be a troubling denial of the science on the effects of fracking. Late last year, Interior Secretary Sally Jewell called on the oil and gas industry to clear up "confusion" about the effects of fracking, a call to action that troubled many fracking opponents, as it dismissed concerns about water pollution and climate change linked to the process.

The Hightower Report: Roast, Grill, and Fry This Chicken – Then Toss It Out
(<http://ens-newswire.com/2013/09/25/fracking-harmed-residents-demand-u-s-epa-renew-investigations/>)

Environment News Service

September 25, 2013

WASHINGTON, DC, September 25, 2013 (ENS) - Residents of three states who say they were harmed by gas drilling and hydraulic fracturing, or fracking, held a news conference in front of the White House today to demand that the government reopen investigations into fracking-related drinking water pollution in Pennsylvania, Texas and Wyoming.

They then delivered 250,000 signatures on a petition stating their demands to U.S. Environmental Protection Agency Administrator Gina McCarthy at EPA headquarters.

The residents were all part of EPA fracking investigations in their states that the agency abandoned despite evidence of fracking-related water contamination.

demonstration

Anti-fracking demonstrators with their boxes of petition signatures in front of The White House, September 25, 2013 (Photo by Earthworks)

The petitions were collected by Stop the Frack Attack and Americans Against Fracking and its advisory committee member, actor Mark Ruffalo.

"Today, I stand with affected community members from Dimock, Pennsylvania; Pavilion, Wyoming; and Parker County, Texas to call on President Obama and the EPA to re-open the investigations on the link between fracking and drinking water contamination," said Ruffalo. "The American people expect and deserve a transparent EPA that makes science-based decisions, free from political interference."

This event comes a month after Dimock, Pennsylvania resident Ray Kemble and Susquehanna County resident Craig Stevens delivered over 50,000 petitions to the EPA asking the agency to reopen its investigation into the possible connection between gas drilling and water contamination in Dimock.

This action was precipitated by a "Los Angeles Times" investigation that found that EPA officials in Washington chose to close the agency's inquiry into drinking water in Dimock, despite evidence gathered by regional EPA investigators that found "significant damage to the water quality, from poisonous contamination likely caused by fracking."

"Last month, we told EPA officials that we would be back in a month with more petitions," said Stevens. "Today, we are here to deliver five times our original number of petitions, and we stand here with affected community members from Pavilion, Wyoming and Parker County, Texas who have been through the same nightmare we have in Pennsylvania."

"For years now, I have had to live with toxic, poisoned fracked water in my home," said Kemble, a former gas industry employee and affected Dimock area resident.

"When EPA finally stepped in and tested my water, I thought 'Thank God. Someone is finally here to help us.'" said Kemble. "But then it became apparent to those of us on the

ground that they were playing politics. EPA officials officially told us that our water was safe to drink but then told us off-the-record not to drink it. Now the truth is out and we want justice.”

In late 2010 in Parker County, EPA’s investigations led the agency to issue a rare emergency order because at least two homeowners were in immediate danger from a well saturated with flammable methane. But more than a year later, the agency rescinded its order without explaining why.

Although EPA had scientific evidence connecting the driller, Range Resources, with drinking water contamination, the agency changed course after political pressure from the company and its lobbyists, Associated Press reported.

fracking rig

Fracking rig, Bradford County, Pennsylvania (Photo by westvillagebob)

“President Obama told us that we would only extract natural gas if it didn’t pollute our water,” said Steve Lipsky of Parker County. “EPA knows my water was polluted by fracking, their own investigator told them so. Now I have to truck in my drinking water. President Obama, you need to tell EPA to reopen its investigations.”

“The purpose of the EPA is to protect us all from these types of health and safety hazards,” said Shelly Perdue, of Parker County, whose water and air have been contaminated with methane. “The methane at my house is 18 times the explosive level. It’s time for President Obama and Gina McCarthy to stand up for our communities.”

More recently, the EPA abandoned its fracking study in Pavillion, which found benzene, a known carcinogen, at 50 times the level that is considered safe. Instead, the EPA handed its investigation over to the state of Wyoming, whose lead politicians have voiced their support for fracking. This research will be funded by EnCana, the same company whose drilling and fracking operations may have caused the groundwater contamination at issue.

“EPA conducted an investigation into the contamination of our aquifer, and discovered that drilling was responsible,” said John Fenton a rancher from Pavillion. “But rather than finish, they knuckled under to political pressure and turned the investigation over to the very state and company that denied there was a problem in the first place. President Obama needs to tell EPA to reopen its investigations.”

The 14 organizations involved in EPA petition delivery are: Berks Gas Truth, Catskill Citizens for Safe Energy, Catskill Mountainkeeper, Center for Biological Diversity, Delaware Riverkeeper Network, Earthworks, Energy Action Coalition, Environmental Action, Food and Water Watch, Frack Action, Gasland, MoveOn.org, Public Citizen and the Western Organization of Resource Councils.

Today’s demonstration follows one million public comments delivered to the Obama

Administration against fracking on public lands. The comments came as the public comment period closed August 24 on the Department of the Interior Bureau of Land Management's second version of its proposed Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands rule.

The BLM rule applies to more than 750 million acres of public lands and minerals: underneath tribal lands, national forests, wildlife refuges and other special places, and also beneath more than 50 million acres of privately-owned land, and drinking water sources for millions of Americans.

As the comment period closed, John Rumpler of Environment America said, "Across the country, fracking has wrought widespread environmental damage, contaminating drinking water and turning treasured landscapes into industrial zones. Yet the oil and gas industry now wants to bring its dirty drilling to the doorsteps of our national parks and right inside our national forests, which provide drinking water for millions of Americans. So at the very least, now is the time for President Obama to step in and order the preservation of unique and sensitive areas as off limits to drilling, as recommended by his own administration's advisory panel on fracking."

Exhibit F

Bloomberg

Drillers Silence Fracking Claims With Sealed Settlements

By Jim Efstathiou Jr. and Mark Drajem - Jun 6, 2013

Chris and Stephanie Hallowich were sure drilling for natural gas near their Pennsylvania home was to blame for the headaches, burning eyes and sore throats they suffered after the work began.

The companies insisted hydraulic fracturing -- the technique they used to free underground gas -- wasn't the cause. Nevertheless, in 2011, a year after the family sued, Range Resources Corp (RRC), and two other companies agreed to a \$750,000 settlement. In order to collect, the Hallowiches promised not to tell anyone, according to court filings.

The Hallowiches aren't alone. In cases from Wyoming to Arkansas, Pennsylvania to Texas, drillers have agreed to cash settlements or property buyouts with people who say hydraulic fracturing, also known as fracking, ruined their water, according to a review by Bloomberg News of hundreds of regulatory and legal filings. In most cases homeowners must agree to keep quiet.

Graphic: Can Drilling Spoil Your Drinking Water?

The strategy keeps data from regulators, policymakers, the news media and health researchers, and makes it difficult to challenge the industry's claim that fracking has never tainted anyone's water.

"At this point they feel they can get out of this litigation relatively cheaply," Marc Bern, an attorney with Napoli Bern Ripka Sholnik LLP in New York who has negotiated about 30 settlements on behalf of homeowners, said in an interview. "Virtually on all of our settlements where they paid money they have requested and demanded that there be confidentiality."

Energy Transformation

Because the agreements are almost always shrouded by non-disclosure pacts -- a judge ordered the Hallowich case unsealed after media requests -- no one can say for sure how many there are. Some stem from lawsuits, while others result from complaints against the drillers or with regulators that never end up in court.

“We are transforming our energy infrastructure in this country from burning coal for electricity to potentially burning a lot of natural gas,” Aaron Bernstein, associate director of the Center for Health and the Global Environment at the Harvard School of Public Health, said in an interview. Non-disclosure agreements “have interfered with the ability of scientists and public health experts to understand what is at stake here.”

Gas Alliance

Confidentiality agreements are included in settlements for many reasons and don’t constitute an admission of fault, according to an industry spokesman.

“The practice is common in every type of litigation in every industry,” Dan Whitten, spokesman for America’s Natural Gas Alliance, a Washington-based industry group, said in an e-mail. “It is often the case that it is less burdensome to settle -- even on claims that have no merit -- than to go into a protracted court battle.”

One driller, Southwestern Energy Co (SWN), of Houston, said it agreed to settle a class-action complaint of water contamination in Arkansas last year only if the agreement remained open so there would be no suspicion.

“If we had a confidentiality agreement, everybody would have thought ‘oh gosh, what did Southwestern do here. They got away with something and just paid these guys a pittance,’” said Mark Boling, Southwestern’s general counsel. The \$600,000 the company paid three families was a fraction of what the legal fees would have been to see the case through, he said.

Legal Threat

Another driller, Encana Corp. (ECA) of Calgary, took a different approach, threatening legal action to keep details of a case out of view of the Colorado Oil and Gas Conservation Commission.

Laura Amos believed gas drilling near her home in Silt, Colorado, about 160 miles (257 kilometers) west of Denver, was to blame for a tumor she developed. Encana, which owns the well, disagreed that fracking made her sick. Yet the company bought her 30-acre property in 2006 for \$310,000, according to public records.

Amos’ complaint and the existence, though not details, of a settlement and non-disclosure pact were disclosed in filings with the oil and gas commission. In December, the agency subpoenaed Amos to testify about a rule it was considering to require water tests. Matt Sura, an environmental attorney in Boulder, Colorado, who represented conservation groups that were seeking Amos’

testimony, said an Encana attorney told him the company would sue Amos if she talked. She didn't want to face a lawsuit from Encana and Sura said he asked the commission to withdraw the subpoena.

'Relevant Testimony'

"She had really relevant testimony," Sura said in an interview. "Because they've bought everyone's silence, they often state that they haven't damaged anyone."

In filings with the commission, Amos said gas drilling on a neighbor's property in 2001 caused her water well to blow out "like a geyser at Yellowstone." Two years later she said she developed health problems that her doctors could not explain and she believes were related to the drilling.

The commission had concluded that Encana was responsible for methane in Amos's well, though it said it found no evidence of fracking fluids in her water. Encana disputed the finding yet agreed to a \$99,400 fine and to monitor the well until methane levels dropped.

"Encana settled the Amos case as it had been an issue a predecessor company had been working with since 2001 and rather than continue with a lengthy and costly process, Encana decided to settle," said Jay Averill, a spokesman for Encana, in an e-mail. He didn't respond to a question about why the company sought to keep Amos from testifying to the commission.

Amos declined to comment on any aspect of the case when contacted by telephone.

Horizontal Drilling

"Why are they settling all these cases?" Deborah Goldberg, managing attorney with the environment group Earthjustice, said in an interview. "There's obviously information that they don't want to get out there."

Michael Gerrard, director of the Center for Climate Change Law at Columbia University, said corporations often insist on confidentiality.

"Companies don't want other potential plaintiffs to know how much money the companies were willing to pay for a settlement," he said in an e-mail.

Advances in fracking and horizontal drilling have lowered energy prices, created thousands of jobs and helped reduce emissions blamed for global warming. President Barack Obama has highlighted the benefits of natural gas, including jobs created in the industry, in major speeches.

The technology, in which millions of gallons of water and chemicals are forced underground to free trapped gas, has brought drilling operations to within hundreds of feet of schools, homes and farms. With that has come complaints of drinking water contamination -- which the industry has forcefully denied.

No Contamination

"There has never been a case of groundwater contamination as a result of hydraulic fracturing," Jack Gerard, president of the American Petroleum Institute, a trade group representing the oil and gas industry, said in an April 23 interview with Bloomberg Radio.

Such claims rest in part on viewing fracking in isolation from the drilling that precedes it and the disposal of wastewater that follows. Defined narrowly, fracking is the step in the middle in which water and chemicals are forced underground to break up rock and free gas and oil.

Regulators in Pennsylvania, however, have linked gas and oil drilling with about 120 cases of water contamination from 2009 to 2012, according to documents obtained through a state right-to-know request. The documents don't say if it was the fracking stage that was to blame, as opposed to faulty drilling or waste disposal.

Public Concern

"At the end of the day the public is less concerned with the niceties of whether it's coming from the fracturing of the shale or whether it is coming from the failure of the well casing because as far as they're concerned, it's all hydraulic fracturing," Mark Brownstein, chief counsel for the Environmental Defense Fund in New York, said in an interview.

The U.S. Environmental Protection Agency is conducting a long-term study of the potential impact of fracking on water.

Settlement terms in the Hallowich case were unsealed over the objections of the driller, Range Resources, by Washington County Common Pleas Court Judge Debbie O'Dell-Seneca who said companies failed to show they'd suffer harm to trade secrets or reputations if the records were open.

Hallowich Case

MarkWest Energy Partners LP (MWE) and Williams Cos.'s (WMB) Williams Gas unit joined in the June 2011 agreement, which included the transfer of the Hallowich home in Hickory, about 25

miles (40 kilometers) southwest of Pittsburgh. The family received \$594,820, including \$10,000 for each of their two children. The rest of the \$750,000 went to attorneys' fees, according to court documents.

Unlike most settlements, the deal required court approval because minor children were parties to the case. That put the settlement in court, where newspapers and public interest groups challenged an order sealing the case.

"We support the judge's decision to release the file, which now clearly shows that the state's extensive investigations clearly proved that there were no environmental or health impacts," Matt Pitzarella, a spokesman for Range, which is based in Fort Worth, Texas, said in an e-mail. The problems the Hallowiches experienced were from the nuisance of drilling and related activities nearby, he said.

'Can't Talk'

As part of the settlement, the Hallowiches signed an affidavit stating there is no medical evidence that their symptoms are related to gas drilling. The Pennsylvania Department of Environmental Protection had said it "cannot conclude" that drilling contaminated the water, a finding the family disputed in its lawsuit. They alleged the agency refused to adequately investigate and outsourced some of the testing to Range Resources itself.

The Hallowiches declined, through their attorney, to discuss the case.

"My clients signed a confidentiality agreement," Peter Villari, their lawyer, said in an interview. "They can't talk to you."

In the end, settlements undermine the industry's credibility, Robert Kennedy Jr., president of the environment group Waterkeeper Alliance, said.

"The industry is asking us to trust it on the one hand, at the same time it's gagging people who get sick so that they're not allowed to talk," Kennedy said in an interview. "Local doctors, the medical community and citizens who are in these areas need to know."

Ruggiero Case

The outcome of Tim and Christine Ruggiero's case remains secret -- though it didn't start out that way. For a time, they detailed their travails on a timeline posted online.

The Wise County, Texas, couple had their well water tested in September 2009 before Aruba

Petroleum drilled on their property, according to the timeline. The water was found safe to drink. In October, Christine Ruggiero saw a black liquid shooting from the drilling rig and had their water tested again. Those tests showed chemicals linked to gas exploration and fracking such as benzene and acetone, according to the consultant's report, which was posted online by the anti-fracking website Earthworks.

Tim Ruggiero wrote a blog post on Earthworks in January, 2012, saying: "Our ordeal living in Gasland has ended," a reference to the 2010 film that documents alleged environmental damage from fracking.

In an interview, he would only say, "The matter has been resolved." Public records show Aruba, which is based in Plano, Texas, in late 2011 bought his home in Decatur, about 44 miles (71 kilometers) north of Fort Worth. The recorded sale price was \$10 "and other considerations," according to the deed.

Safety Limits

The EPA tested the Ruggieros' water and found no evidence of contaminants above the safe-water drinking limits, Jim Lovett, an Aruba executive, said in an interview. An EPA spokeswoman declined to release the results.

"All I'm allowed to say is the dispute has been settled," Lovett said.

After Jeff and Tina Richardson complained that gas drilling ruined the well water at their home in Wellsboro, Pennsylvania, about 100 miles (160 kilometers) northwest of Scranton, Royal Dutch Shell Plc (RDSA) gave them bottled water and paid for a hotel room to shower in. The couple is asking for much more.

Water tests conducted after East Resources Inc. drilled the well revealed methane levels as high as 31 milligrams per liter. The U.S. Interior Department recommends monitoring when levels rise to 10 milligrams, and immediate action at 28.

Shell Purchase

In a May 16, 2012, letter, Pennsylvania regulators said gas drilling had impacted Richardson's water. Shell provided replacement water even though regulators never directly linked the company to issues with the family's drinking water, according to Kelly op de Weegh, a spokeswoman for Shell, which is based in The Hague and bought the gas well from East Resources in 2010.

The couple lives in an area where methane naturally seeps into aquifers, op de Weegh said.

Chesapeake Energy Corp. (CHK) provided a similar explanation after agreeing to pay \$1.6 million to buy three families out of their homes in Terry Township, Pennsylvania, about 50 miles (80 kilometers) northwest of Scranton. The settlement included payment for the properties plus other compensation.

Chesapeake, which is based in Oklahoma City, settled even though there were no water tests at the affected homes before drilling, the company said in a statement.

‘Bring Closure’

“The pre-drill testing that we do have in the area shows that a significant percentage of the residential wells had measurable methane levels prior to any Chesapeake drilling activity in the area,” according to the statement. Chesapeake “has entered into the settlement so the families and the company could bring closure to the matter.”

Richardson declined Shell’s offer of a water filtration system, which he said doesn’t guarantee chemicals used in fracking will be removed. When the couple turned down the offer, Shell stopped paying for hotel showers.

The Richardsons are now seeking a way out of the “dream” house they built in 1993 where today, they only use tap water to flush the toilets.

“We thought we did everything right to protect ourselves,” Richardson, who is 60 and works for a financial services company, said in an interview. “We’re asking for a settlement. At this point they’re refusing to buy us out. I don’t know if I’m ever going to feel safe drinking the water.”

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U.S. NEWS

Energy Boom Puts Wells in America's Backyards

Hydraulic Fracturing Largely Driving Transformation of the Nation's Landscape

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By RUSSELL GOLD and TOM MCGINTY CONNECT

Oct. 25, 2013 11:00 p.m. ET

More than 15 million Americans now live within one mile of a fracking well. The shale boom is creating conflicts between those who are profiting from the wells and those who aren't. Photo: Benjamin Rasmussen for The Wall Street Journal

Over the summer, something sprang up in the view from Dorsey Johnson's back deck north of Denver, where she watches sunsets over Colorado's front range.

It was a noisy, towering rig, drilling a new oil well.

"There was clanking. There were trucks going by," she says. All she wanted was for the rig to go away.

Across the U.S., new oil and gas wells have turned millions of people into the petroleum industry's neighbors. For many, the oil and gas companies are welcome newcomers bearing checks. Others consider the new arrivals loud, smelly and disruptive. The drilling boom is firing up resentment in some communities when one person's financial windfall means their neighbors about a working well.

The Wall Street Journal analyzed well location and census data for more than 700 counties in 11 major energy-producing states. At least 15.3 million Americans lived within a mile of a well that has been drilled since 2000. That is more people than live in Michigan or New York City.

The arrival of the Oil Patch in the nation's backyards is a result of an extraordinary U.S. energy boom driven largely by hydraulic fracturing, or fracking, a practice that makes it possible to tap into dense, previously impenetrable shale formations to extract fossil fuels. Fracking enabled the drilling of the Niobrara Shale in Colorado, as well as the Marcellus Shale in Pennsylvania, the Barnett Shale in Texas and others.

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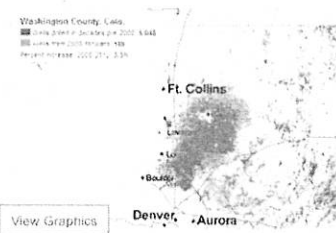
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Neighborhood Wells

More than 15 million Americans live within a mile of a well that has been drilled and fracked since 2000. Explore development in 11 key states.



The change can be dramatic. In Johnson County, Texas, in 2000, there were fewer than 20 oil and gas wells. Only a fraction of the residents of this mostly suburban county, south of Fort Worth, lived anywhere near a well or could tell you where to find one.

Today, more than 3,900 wells dot the county and some 99.5% of its 150,000 residents live within a mile of a well. Similar transformations took place in parts of Pennsylvania, Colorado and Wyoming, according to Journal data.

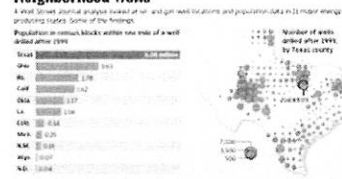
Nationwide some 23 counties, with more than four million residents, each had more than three new wells per square mile, according to the 2010 Census and well-location information from DrillingInfo, a data provider to the oil industry. Comparisons to well density in earlier eras is difficult, due to incomplete records from a century's worth of drilling.

Fracking gave a boost to an ailing national economy. The U.S. is awash in inexpensive natural gas, lowering electricity costs and home heating bills. Crude oil production is at a 22-year high and oil imports are at their lowest level since 1996, and falling. The energy boom has stirred dreams the U.S. could end its reliance on foreign oil, though that remains a long way off.

But the energy isn't coming from a small number of immense wells in some distant oil field. It is coming from hundreds of thousands of small wells that now blanket entire counties.

As a result, parts of the U.S. face unprecedented industrialization. Each well requires earth-moving machinery to create a flat 1- or 2-acre pad of compressed earth. Then, a 10-story rig is assembled to drill a hole up to 10,000 feet deep.

Neighborhood Wells



After that, the well is fracked, creating thousands of tiny cracks in the rock to free the oil or gas. That entails heavy equipment: truck-sized containers of water and sand, mixers, stadium lighting, pumps, chemical storage and injection vans and recreational-vehicle command centers to orchestrate the operation.

The process can last three weeks to three months. Once drilling and fracking ends, the gear moves to the next well and a valve several feet tall is installed.

In Cleburne, Texas—the seat of Johnson County—Robert Webb lives about a 10th of a mile from a Chesapeake Energy Corp. well from which he receives a

royalty check. He says he gets about \$100 a month from one nearby well and a handful of others close by. He and his neighbors pooled their acreage and lease as a group.

The arrival of the drilling rig and fracking equipment "sounds like setting up of a circus, more or less," he says. "Then the trucks start rolling in and you don't know where they are coming from, but they keep coming."

The rig was like a "big old Christmas tree, it is lit up like nobody's business," he says. "The activity is practically 24/7." Chesapeake drilled three wells back-to-back in July, according to the state.

Still, he doesn't regret signing the lease and says he "probably would" do the same

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thing again. "It is still free money. Someone offers you money for something that is not going to affect you dramatically, of course you are going to take it," he says.

Methodology

The Wall Street Journal obtained data documenting the locations and drilling dates of more than 2.3 million wells in 11 states from DrillingInfo, a data provider to the oil industry, and the Ohio Department of Natural Resources. The Journal split the wells into two groups: those drilled before the year 2000 and those that were drilled in the year 2000 or later. The industry began to use modern hydraulic fracturing techniques, which set off the ongoing energy boom, on a large scale in 2000. For most states, the data is current through the end of 2012; a small percentage of the wells were drilled in 2013.

To classify each well, the Journal used the date that drilling of the well commenced—known in industry parlance as the "spud date." When that wasn't available, the date when the well first started producing oil or natural gas was used. About 21% of the well records for the states outside of Ohio were missing key pieces of information and were discarded from the analysis.

To determine how many people lived near wells that had been drilled from 2000 forward, the Journal created SQL Server databases with geographical data fields for the latitude and longitude of each well, and for the polygon shapes of all 2010 Census blocks in each state. The Journal then calculated which Census blocks were within 1 mile of a well that had been drilled after 1999.

A block was included in the analysis if any part of it was within a mile of the well. The population figures the Journal used for the Census blocks are from the 2010 Census, the most recent data available at the block level.

Nationwide, the drilling shows little sign of letting up. A decline in natural-gas prices has made drilling less attractive around Fort Worth and in northern Louisiana, where the wells produce mostly gas. So the rigs migrated to North Dakota and south of San Antonio to target oil from the Bakken and Eagle Ford shale formations.

There are more than five wells, on average, per square mile of Johnson County. In Pennsylvania, home to the Marcellus Shale, the average is a little less than one well per square mile. Parts of the commonwealth, including counties near Pittsburgh, have more than four per square mile.

On the state's other side, Wyoming County has relatively few wells clustered in a few communities. One is Mehoopany, where Emily Krafjack lives 500 feet from one well pad; another is less than a mile away. When the closer well was drilled, she says, the noise was so loud that she couldn't hear her television, and idling trucks waiting to unload fracking sand filled her house

with diesel fumes. She shares in well royalties, which she declined to disclose.

She is working with a nonprofit that strives to strike what she calls a "delicate balance" between the irritation of living near wells and the benefits they bring. Her group's mission isn't to stop the drilling, she says, but to preserve quality of life and protect the environment while helping the economy.

She appreciates the gains brought by the drilling boom. "I know one guy who was an over-the-road trucker, but his truck was parked in his driveway for a year and half because there were no jobs," she says. "He got a job hauling rocks and he's home every night and makes a good paycheck."

Audio

Russell Gold and WSJ's Mathew Passy discuss the impact of these wells



00:00 | 00:00

Concerns about drilling have led to a host of state and local restrictions, from an outright drilling moratorium in New York state to rules in numerous towns that limit hours of drilling and require companies pay for sound barriers. Municipalities in Pennsylvania filed a lawsuit when the

state attempted to limit their ability to use their zoning powers to curtail drilling. The state Commonwealth Court sided with municipalities in 2012 and threw out a section of a state law, called Act 13, that would have limited municipalities' ability to zone and regulate drilling.

The federal government is weighing steps to make drilling less intrusive and safer. There is a rule set to go into effect in 2015 to require capturing emissions from fracking sites. The EPA is also studying the potential effect of fracking on drinking water and will release findings and recommendations in 2014.

Some companies say they are working to become better neighbors. Mark Boling of Southwestern Energy Co. says if the industry fails at that, it will face community opposition that could eventually make it harder for it to drill.

"The industry has done a great job of figuring out how to crack the code below ground—how do you get natural gas or oil out," he says. "However, it hasn't spent a lot of effort thinking about how you handle development above ground. We need more unconventional thinking about this." He cites better mufflers for machinery, equipment to capture air emissions, such as volatile organic compounds, and sound barriers around drilling pads as examples of what could be done.

Often, the difference between homeowners' embracing the drilling or opposing it is tied to whether they benefit financially. Research firm IHS Inc. estimates, in a recent report funded by energy companies, that landowners received \$504 million last year from leasing land to drillers, though it couldn't specify how many owners split that amount. The report didn't calculate how much was paid in royalties on oil and gas actually pumped; industry officials said it was a larger sum.

“ Often, the difference between embracing or opposing drilling is tied to whether land-owners get royalties. ”

In the South Texas Eagle Ford, recent research by the University of Texas at San Antonio's Institute for Economic Development found the 14-county region, the size of Maryland and Massachusetts combined, generated an average of \$250 an acre last year in royalties. This ongoing payment is in addition to one-time leasing bonuses that were generally a few thousand dollars per acre.

Sue Barnett of Arlington, Texas, owns 10 acres, one of the few larger, undivided properties in her suburban area between Fort Worth and Dallas. She signed a lease with a unit of Exxon Mobil Corp. (XOM -0.78%), which built a drilling pad about "50 steps from my lawn," she says.

Three wells were drilled on her property starting in 2009. "The work went like clockwork," she says. Exxon said it would pay to move her horses to another barn if they were spooked by the noise, but it wasn't necessary.

"When they handed me the check, I said I would pay my taxes and some bills I owe and put away some money for rainy weather," she says. "I am grateful." She declined to say how much money she receives.

But many homeowners don't get payments. It is legal, and in some places common, for land ownership to have been split off from "mineral rights"—the rights to underground resources. One person ends up owning and living on the land, while a different group owns the right to drill there. Home buyers don't always know or think to look into whether a property comes with the mineral rights.

Russ Braudis, the former mayor of Azle, Texas, northwest of Fort Worth, says one subdivision there was split down the middle. Half the residents owned their mineral rights—and got leasing and royalty checks—and the other half didn't. "Whether you were for it or against it," he says. "That's where the line was drawn."

John Tintera, former executive director of the Texas Railroad Commission, the state oil and gas regulator, says he regrets failing to address the many landowners who shouldered drilling's burdens but didn't see payments. People who got "mailbox money" for the minerals "were a lot more willing and financially able to adjust to the activities that occur with normal drilling." He said as a regulator he most often heard complaints from people who owned land, but not mineral rights.

One of the most common complaints from residents is the influx of truck traffic. Drilling and fracking a single well can require more than 1,000 trips by trucks to haul in equipment, workers and water. After the well is finished, an average of one truck a day visits each well, according to the Texas Department of Transportation.

Nearby fracking can also lower the value of homes based on a fear that it will contaminate groundwater. One study in suburban Pittsburgh that examined fracking found that, between 2004 and 2009, prices of homes near wells were 10% higher than homes further from wells—unless the home relied on well water as opposed to municipal water, in which case the sale price was 16% lower than expected.

"There is clearly a perception of a risk to groundwater," says study author Lucija Muehlenbachs, a research fellow at Resources for the Future, a nonprofit energy and environment researcher.

Ms. Johnson, whose deck view in Colorado was marred by the rig, said a few days ago that things got better when drilling finished. Now she is worried about future wells on the same pad, a common practice. "Is there more to come?" she says. "You just want your little piece of paradise to stay the same." She doesn't get royalties.

She also worries about fracking's effect on water. "I need to be educated," she says, "because now it's in my backyard."

Studies haven't backed up claims of widespread water contamination. However, well proximity has raised some questions. A recent scientific paper found that water wells in Pennsylvania within one kilometer of a natural-gas well had higher levels of dissolved methane, and distance to wells had a significant correlation with the amount of gas in the water.

Methane in water carries a fire risk if it escapes and builds up in sufficient quantities. The energy industry contends the higher methane levels are naturally occurring and unrelated to wells.

"Any time there is more industrial activity where people live, in some cases in people's backyards, there is more chance that something goes wrong," says Robert Jackson, a biology professor at Duke University who has researched fracking.

"We'll have a million new oil and gas wells drilled over the next few decades in the U.S.," he says. "It's in everyone's best interest to get them right."

Some municipalities are working to do that. A.J. Krieger, town administrator in Erie, Colo., about 20 miles north of Denver, last year signed a voluntarily agreement with two energy companies to mandate the use of vapor-recovery units—something that isn't a typical industry practice but is becoming more widespread. The units capture pollutants, including carcinogens, that can be vented into the air during fracking operations.

Mr. Krieger says drilling can coexist with suburbs as long as local governments have "a strict adherence to quality-of-life issues and a good-faith effort to implement best practices."

Back in Johnson County, Texas, Roger Harmon, the top elected official since 1995, says change "has been good and it has been bad." Many residents received large leasing and royalty checks, and the county lowered its property-tax rate thanks to drilling revenue. But he mourns the loss of "the country atmosphere," he says. "Everywhere you look, there is a well."

—Donna Bryson contributed to this article.

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Mick Rafter

The "split estate" issue has been going on for many years. The rig goes away, the trucks go away, the noise goes away and the nation leads its way to more energy independence. Commerce makes impositions on the private sector. It is not fatal. It is simply a reality of capitalism.

Oct 29, 2013

This author does not have any comments to private



Chris Marrou

The Texas Commission on Environmental Quality keeps track of air pollution in the state and they consistently show air quality better than in cities such as Los Angeles, Boston and other cities where people distrust fracking. Fort Worth has more than 2,000 fracked wells in its city limits and the air is as clean as it was in the years before such wells.

http://www.tceq.texas.gov/cgi-bin/compliance/monops/aqi_rpt.pl

Check and see. They also note that Houston, for all its supposed sins, has cleaner air than Los Angeles.

Oct 28, 2013

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